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No.

IN THE

Supreme Court of the United States

ALEC F. REDFEARN and
MARGARET A. REDFEARN,
Petitioner(s)

v.

UNITED STATES TRUSTEE, and
CHAPTER 7 TRUSTEE ROBERT SILLIMAN, and
HUNTCLIFF HOMES ASSOCIATION, INC.
Respondent(s)

On Petition For Writ Of Certiorari
To The United States Court of Appeals, Eleventh Circuit
Case 05-15053-BB
JURISDICTIONAL DISMISSAL ORDER
DECEMBER 21, 2005;
MOTION FOR RECONSIDERATION DENIED
MARCH 2, 2006

PETITION FOR WRIT OF CERTIORARI

Pro se PETITIONER(S)
Alec F. Redfearn, Petitioner
Margaret A. Redfearn, Petitioner
605 Poinsetta Drive
Satellite Beach, FL 32937
(321) 779-0508

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Questions Presented For Review

1.

Whether the Court of Appeals erred in holding that a "Conditional Sales Order" which set a date and time for hearing objections of omitted Creditors (with a hearing only if objections were filed), **required a new Notice of Appeal** (after the hearing date set for hearing objections) had to be filed for jurisdictional purposes even though no objection was filed by any omitted creditor or other party. (Emphasis added)

2.

Whether a pre-mature Notice of Appeal, pursuant to "Rule 4(a)(2) of the Federal Rules of Appellant Procedure", that was filed in the United States District Court hours after the announcement in the U.S. Bankruptcy Court approving a "Conditional Sale Order" and before the entry of the docketed ORDER, was for jurisdictional purposes a valid jurisdictional Notice of Appeal? A new Notice of Appeal was filed in the United States Court of Appeals after the ruling of the United States District Court denying the Appellants Motion For Leave to Appeal.

3.

Whether the restated and re-alleged Notice of Appeal filed in other briefs of the Debtors, on four separate dates after the approval of the conditional sales ORDER in other briefs of the Debtors, and were not titled Notice of Appeal meets the requirement for a valid jurisdictional Notice of Appeal in the United States Court of Appeals pursuant to FRAP (3)(c)(1)(C)(4) *Contents of Notice of Appeal?*

4.

Whether the United States Court of Appeals Eleventh Circuit Local Rule 40-4 11th Cir. R. 40-4 Review of Order Dismissing Appeal for Lack of Jurisdiction requiring a Motion for Reconsideration is unconstitutional in that Rule 40-4 bars Appellants from filing a FRAP 40. Petition for Panel Rehearing and/or a FRAP 35. En Banc Determination denying Appellants due process where clear error exist?

5.

Whether the United States Court of Appeals Panel should have followed 2005 Supreme Court ruling, *Bell v. Thompson* 162 L .Ed 2d 693, at Page 705 (2005), which suggest it is better to grant a rehearing *en banc* or panel rehearing by the Court of Appeals than to request a certiorari that may eventually overturn the ruling in a later amended opinion? A Motion to Compel Filing of Motion for Rehearing *En Banc* and Motion for Panel Rehearing was returned unfiled, with citation to *Bell v. Thompson* included within the Appellants Motion.

6.

Whether a Motion for Leave to Appeal that is denied [1] is appealable to the United States Court of Appeals, when it is the final order that ends an adversary proceeding for post-petition pending litigation charges of alleged illegal activity, that were sold by the Trustee to the defendant in the Motion for Leave to Appeal and was the same buyer in the Trustee's Sales ORDER with a Notice of Appeal? A Notice of Appeal was filed in the United States Court of Appeals 8 days after the denial of the Motion for Leave to Appeal & Motion for Reconsideration, and as a matter of law is in square conflict with decisions of the Eleventh Circuit and other Circuits?

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[1] ORDER United States District Court
(DC50.07/13/2005,Page 13)
*Quite simply, **granting leave to appeal** the bankruptcy court's denial of the movants' motion to compel **would be bad policy**.* (Emphasis added)

Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543
(202) 479-3011

Alec F. & Margaret Redfearn v. U.S. Trustee et. al.
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Appendix – Exhibits

Page	Exhibit	Court, Docket Number & Date Docketed
A-2	"A"	ORDER Jurisdictional Dismissal (CA__,12/21/2005)
A-4	"B"	ORDER Motion for Reconsideration Denied(CA__,03/02/2005)
A-5	"C"	ORDER November 4, 2004 Hearing (BC276,11/09/2004)
A-7	"D"	Submission Sheet – Notice of Docketing of Record – (BC274,11/04/2004)
A-9	"E"	ORDER December 9, 2004 Hearing (BC310,12/10/2004)
A-11	"F"	Letter May 31, 2006 USSC Rule 33.1 (USSC __,05/31/2006)

Notes:

(CA United States Court of Appeals Eleventh Circuit Northern District of Georgia Case 05-15053-BB

(BC United States Bankruptcy Court, Atlanta Division, Northern District of Georgia Case 02-97767-MGD

(USSC Supreme Court of the United States – letter only

Example: (BCxxx,date) represents the Court, Docket Number & date docketed

Supreme Court of the United States
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Table of Citations

Page	Citation to Caselaw	
7	Carr v. Sadler 190 B.R. 941, Page 945	(M.D.Fla. 1995)
9,10,12	Firstier Mtge. v. Investors Ins. Co. 498 U.S. 269, 112 L. Ed. 743 (1991)	
16	Gonzalez v. Crosby, Florida Dept of Corrections 162 L.Ed. 2d 480, Page 500 (2005)	
16	Ortiz v. McBride 323 F.3d 191, Page 194	(2nd Cir. 2003)
16	Traguth v Zuck 710 F.2nd 90, at Page 95	(1983)
6	In re Charter Co. 778 F.2d 617, Page 621	(11th Cir. 1985)
5,14,15	In re Delta Resources, Inc. 54 F.3d 722, Page 726	(11th Cir. 1995)
7	In re Freeman 956 F.2d 252, Page 255	(11th Cir. 1992)
12	11 U.S.C. § 363(m) Stay for Approved Sale	

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Page	Citation to Caselaw
6	18 U.S.C. § 3057 Investigation by United States Attorney
1	28 U.S.C. § 2101 Appeal
1	Supreme Court Rule 10 Considerations Governing Review on Certiorari
11	FRAP (3)(c)(1)(C)(4) [2] Notice of Appeal & informality of form or title and who's intent to appeal is clear from the notice
7	FRAP 4(a)(2) Premature Notice of Appeal
7	FRAP 35 Petition for Rehearing *En Banc*
7	FRAP 40 Petition for Panel Rehearing

[2] FRAP (3)(c)(1)(C)(4) Contents of Notice of Appeal
(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or failure to name a party ***whose intent to appeal is otherwise clear from the notice.*** (Emphasis added)

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PETITION FOR WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. § 2101 & SUPREME COURT RULE 10;

COME NOW ALEC F. REDFEARN and MARGARET A. REDFEARN Debtors/Appellants, hereafter as the "Redfearns", files their PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES PURSUANT TO 28 U.S.C. § 2101 & SUPREME COURT RULE 10; JURISDICTIONAL DISMISSAL ORDER DATED DECEMBER 21, 2005; MOTION FOR RECONSIDERATION DENIED MARCH 2, 2006 as follows:

JURISDICTIONAL DISMISSAL ORDER DATED DECEMBER 21, 2005; MOTION FOR RECONSIDERATION DENIED MARCH 2, 2006;

List of all parties to the proceeding

The following parties are listed as parties to this proceeding:
Mr. Guy B. Gebhardt, Esq.
Asst. United States Trustee

Mr. James H. Morawetz, Esq.
United States Trustee

Ms. Laura Bonander, Esq.
United States Attorney –
Attorney for United States Trustee

Mr. Robert B. Silliman, Esq.
Chapter 7 Trustee

Mr. Henry F. Sewell, Esq.
Attorney for Chapter 7 Trustee

Mr. J. Christopher Simpson, Esq.
Attorney for Huntcliff Homes Association &
Arthur J. Stockslager

Huntcliff Homes Association, Inc.
Defendant U. S. Bankruptcy Court
Adversary Proceeding 04-9104

Mr. Arthur J. Stockslager
President – Huntcliff Homes Association, Inc. &
U. S. Bankruptcy Court Adversary Proceeding 04-9104
(Co-Defendant & Individual)

Judge Mary Grace Diehl
United States Bankruptcy Court Judge

Judge Julie E. Carnes
United States District Court Judge

Judge Susan H. Black
United States Court of Appeals Judge – Eleventh Circuit

Judge Rosemary Barkett
United States Court of Appeals Judge – Eleventh Circuit

Opinions & Orders

The Appellants respectfully and humbly request of this Court their consideration regarding the disposition of this case. In concise outline form the sequence of significant events shown below does warrant the Court of Appeals to grant jurisdiction to hear the Appellants appeal:

9/13 /2004 Motion for Reconsideration (BC251,9/13/2004) filed regarding September 4, 2004 hearing (on 09/13/2004 the original Motion was lost in the mail [1] with a withdrawal of the Motion and a Second Original Motion for Reconsideration was filed (BC252,09/13/2004 & BC253,09/13/2004)

10/4/2004 The original Notice of Appeal (BC255,10/04/2004) was **related only to the September 2, 2004 hearing.**

10/4/2004 The original Motion for Leave to Appeal (BC254,10/04/2004) was **related only to the September 2, 2004 hearing.**

10/12/2004 Motion to Sell Two Assets of the Bankruptcy Estate Free & Clear of Liens filed by Robert B. Silliman (BC259,10/12/2004).

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[1] The docket is in error stating the First Original Motion for Reconsideration was mailed on Friday September 13, 2004 – UPS ER912895601US. It was mailed by USPS on Friday September 10, 2004 with a guaranteed Saturday noon delivery .... at 3:05PM on September 11, 2004 the Express Mail was found to be misrouted to Huntsville, AL. It should be noted that four Florida hurricanes had destroyed the Orlando mail facility and all mail delivery was unpredictable. This is just one of many mail delivery problems that required the Appellants to drive overnight to Atlanta (1050 mile round trip) to meet a required filing date.

10/18/2004	*Motion for Reconsideration withdrawn* (BC261,10/18/2004)
10/18/2004	Objection to the sale of Two Assets of the Bankruptcy Estate and Motion for Stay (BC262,10/18/2004)
10/18/2004	The Amended Notice of Appeal (BC266,10/18/2004) was **related only to pending sale of certain bankruptcy assets.**
11/04/2004	Hearing before Bankruptcy Judge Mary Grace Diehl approved the conditional sale of certain bankruptcy assets.
11/04/2004	U.S. District Court case 1:04-CV-3245 (DC1,11/04/2004) was docketed with transmittal of Motion for Leave to Appeal (BC254,10/04/2004), Notice of Appeal (BC255,10/04/2004), Amended Notice of Appeal (BC266,10/18/2004) and Motion for Emergency Hearing; Motion for Stay; Settlement & Compromise Agreement; Motion to Sell Two Assets of the Bankruptcy Estate (DC4,11/04/2004) [2] related to the sale of the sale of Two Assets of the Bankruptcy Estate.
11/04/2004	Notice of Docketing of Record in civil case 1:04-CV-3245 was docketed in the Bankruptcy Court on November 4, 2004 after the hearing (BC273 & BC274,11/04/2004) (DC1,11/04/2004)

[2] The Motion for Emergency Hearing was related to the approved sale of certain bankruptcy assets and was hand delivered that day to each on the attorneys shown in the Certificate of Service.

Opinions & Orders – Additional Statements of Fact
The November 4th, 2004 Hearing Approved Sale of Certain Bankruptcy Assets & Motion for Leave to Appeal was not Granted and is Appealable [3]

The hearing before Bankruptcy Judge Mary Grace Diehl on December 9, 2004 (Transcript BC317,12/21/2004) and ORDER of December 10, 2004 (BC310,12/10/2004) was limited to briefs and motions of the Appellants. The November 4, 2004 ORDERED sale in open court is the final order of the sale of certain assets of the bankruptcy estate. (Exhibit "A",CA_, 12/21/2005, Page 2).

The original Motion for Leave to Appeal (September 4, 2004 hearing) (BC254,10/04/2004) was filed with the District Court on November 4, 2004 (DC1,11/04/2004) and as not granted [4] (DC50,07/21/2005,Page 13). In the alternative based on *In re Delta Resources,* if the Motion for Leave to Appeal had been granted, then, "***no appeal to the Court of Appeals will lie***" (See Footnote 3)

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[3] *In re Delta Resources, Inc.* 54 F.3d 722, at page 726 (11th Cir. 1995)
Had we concluded that the bankruptcy court order at issue was an interlocutory order, the critical question nevertheless would be whether the district court issued a final order which could be appealed to the court of appeals under 28 U.S.C. §158(d). "**[i]f the district court has granted leave to appeal an interlocutory order**, its decision cannot be final for section 158(d) purposes, **and no appeal to the court of appeals will lie.**"). (Emphasis added)

[4] ORDER United States District Court (DC50,07/13/2005,P 13) Quite simply, **granting leave to appeal** the bankruptcy court's denial of the movants' motion to compel **would be bad policy**. (Emphasis added)

The approved sale of pending litigation claim 04-9104, closing of Adversary Proceeding 04-9104, discharge of the Debtors, and not granting Motion for Leave to Appeal makes this an appealable final order to the Court of Appeals based on the caselaw within *In re Delta Resources*. The Motion for Leave to Appeal was not granted. This court has previously held "**any order within a bankruptcy case which concludes a particular adversary proceeding should be deemed final and reviewable.**" *Id; see Charter Co. v. Prudential Ins. Co. of America (In re Charter Co.)*, 778 F.2d 617, at Page 621 (11th Cir 1985).

This Motion for Leave to Appeal, motion pursuant to 18 U.S.C. §3057, was an interlocutory order including Adversary Proceeding 04-9104 and not granted.

The Amended Motion for Leave to Appeal[5] was not granted (BC298,11/22/2004) (DC22,11/19/2004) and Motion for Stay Pursuant to 11 U.S.C. §363(m) was denied, after the docketing of the final sales ORDER (BC292,11/17/2004).

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[5] (BC298,11/22/2004, Exhibit "A", Page 6, Paragraph 17) Alec F. Redfearn and Margaret A. Redfearn, restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255, and amended Notice of Appeal filed on October 18, 2004 Docket Entry 266, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273, Amendment to MOTION for Leave to Appeal, Reply to ORDER for Emergency Hearing for Huntcliff Homes Association, United States Trustee, and Trustee Robert Silliman filed with this Court during the week of November 16, 2004 and other briefs filed in case 1:04-CV-3245-JEC.

The amended Motions for Leave to Appeal[6] and Notice of Appeal is required to put appellees on notice as to which issues it must defend against, and was restated and realleged numerous times.
See *Carr v. Sadler* 190 B.R. 941 (M.D.Fla. 1995)

Other Orders

The Following Motions were filed with the United States Court of Appeals and were returned unfiled:

03/02/2006 Petitioner's January 5, 2006, motion for reconsideration of our December 21, 2005, order dismissing in part this appeal for lack of jurisdiction, and remanding in part DENIED. (SHB, RB)

03/07/2006 PRO1 (Letter to pro se) issued returning Appellants Motions to Compel filing of Motion for *En Banc* Rehearing returned unfiled. Pursuant FRAP 40.

03/15/2006 The Clerk is directed to return Appellants' motions unfiled and to accept no further filings in this closed appeal. (SHB) Pursuant to FRAP 35.

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6 *Carr v. Sadler* 190 B.R. 941 at page 944-945 (M.D.Fla. 1995),
"An adequate designation of issues on appeal is also necessary to put the Appellee on notice as to which issues it must defend against and whether the appellant's designation of issues will produce a record adequate for the appellant court".

This Court will not consider an issue that is not properly inferred from previously stated issues.
In re Freeman 956 F.2d 252, 255 (11th Cir. 1992)

Statement of Jurisdiction

The Court of Appeals Jurisdictional Questions Issued on September 9, 2005 with the Appellants Response being filed on October 3, 2005. Appellants filed their Reply to Response on Jurisdictional Questions on October 13, 2005. On December 21, 2005 the Appeal was DISMISSED for lack of Jurisdiction. Appellants filed their Motion for Reconsideration on December 30, 2005, which was denied on March 2, 2006. Appellants attempted to file their Motion to Compel Filing of Motion for Rehearing *En Banc*, which was returned unfiled on March 7, 2006 and then filed their Motion to Compel Filing of Panel Rehearing and Motion for Panel Rehearing returned unfiled on March 15, 2006. Petitioners file Writ of Certiorari pursuant to 28 U.S.C. § 2101 & SUPREME COURT RULE 10(c).

Notice of filing of Notice of Appeal and the filing of Writ of Certiorari, with the United States Court of Appeals, was returned unfiled along with SunTrust Certified Check number 2130251013 dated March 16, 2006. The Redfearns were told that they should file their Writ of Certiorari directly with the Supreme Court of the United States along with their payment of $300.00 within 90 days.

Constitutional Provisions &
Regulations in this Case

Statement of Conflicts with a decision of the United States Supreme Court – *Firstier Mtge. v. Investors Ins. Co.* 498 U.S. 269, 112 L. Ed. 743 (1991)[7]

Citation to *Firstier Mtge. v. Investors Ins. Co.* 498 U.S. 269, 112 L. Ed. 743, at page 744,750-752 (1991) that a premature Notice of Appeal and "*Rule 4(a)(2) of the Federal Rules of Appellate Procedure provides that a notice of appeal filed after the announcement of a decision, but before the entry of the judgement, shall be treated as filed after such entry and on the day thereof – is intended to codify a general practice in the United States Court of Appeals of deeming certain premature notices of appeal effective, in recognition of the principles that (1) unlike a tardy notice of appeal, certain premature notices do not prejudice the appellee, and (2) the technical defect of prematurity therefore should not be allowed to extinguish an otherwise proper appeal.*"

The Order of dismissal (CA __, 12/21/2005), and denial of their Motion for Reconsideration (CA__,03/02/2006). The dismissal of December 21, 2005 was in part, related to the Sales Order of two assets of the bankruptcy estate, " .... *the bankruptcy court approved the sale of certain bankruptcy assets. Because the bankruptcy's court's* ***December 9, 2004****, order was entered one month after the appellant's notice of appeal was filed in the district court,* ***it was not within the scope of the appeal that was before the district court****. Moreover, the appellate records do not reflect that the appellants filed a notice of appeal challenging the December 9, 2004, order.*"(Emphasis added)

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[7] *Firstier Mtge. v. Investors Ins. Co.* 498 U.S. 269, at page 743 112 L. Ed. 743, (1991)[7]
Decision: Premature notice of appeal filed from Federal District Court's bench ruling held effective notice of appeal, under Federal Rule of Appellant Procedure 4(a)(2), from subsequently entered final judgment.

Statement of the Case

The Conditional Sales Order by Bankruptcy Judge Mary Grace Diehl at the November 4, 2004 hearing (BC289,11/12/2004) and ORDER (BC292,11/17/2004) is "the final sales order" of certain assets of the bankruptcy court, and that the December 9, 2004 Order[8] (BC310,12/10/2004) did not change the November 4, 2004 sales ORDER from the bench. The December 9, 2004 order only disposed of numerous filings and objections by the appellants. The only condition of the November 4, 2004 sales Order was an objection by identified creditors who had not been noticed, which was a non-contested issue at the December 9, 2004 hearing. The November 2004 ORDER is the final sales order. Also, the Motion for Leave to Appeal is appealable since it was not granted and is now a final order.

Numerous briefs of the appellants included an updated/amended Notice of Appeal [9], where Appellants restate and reallege their Amendment Notice of Appeal [10] filed on October 18, 2004 Docket Entry 266

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8 ORDER December 10, 2004 (BC310,12/10/2004)
On November 9, 2004, the Court entered an order which conditionally approved the Chapter 7 Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear.

9 Alec F. Redfearn and Margaret A. Redfearn, (hereafter as "Redfearns") restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255, and **Amended Notice of Appeal filed on October 18, 2004 Docket Entry 266**, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273. (Emphasis added)

10 (BC262,10/18/2004, Paragraph 5)
Debtors Objection to Motion To Approve Sale of Two Assets (Docket Entry 259) will be filed with the Court this date.

(BC266,10/18/2004). The Appellants' objection to the sale of Two Assets of the Bankruptcy Estate and Motion for Stay was filled concurrently on October 18, 2004 (BC262,10/18/2004)

The Appellants amended their Notice of Appeal, after the November 4, 2004 hearing where Bankruptcy Judge Mary Grace Diehl ruled from the bench the conditional sale of certain bankruptcy assets. See (DC1,11/04/2004) [11], (DC10,11/10/2004,Page 2,Paragraph 2) [12]

FRAP (3)(c)(1)(C)(4) [13] specifies an appeal **may not be** dismissed for **informality of form or title and intent to appeal is otherwise clear**. (Emphasis added) The effective date of the Notice of Appeal is November 4, 2004 (DC1,11/04/2004). On November 17, 2004 the order was docketed approving the sale of certain bankruptcy assets (BC292,11/17/2004). The United States Court of Appeals – Eleventh Circuit decision is in conflict with established caselaw and United States code – for the Notice of Appeal & Motion for Leave to Appeal & with no established caselaw

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11 Docketing of case 1:04-CV-3245 (DC1,11/04/2004)
Motion for Leave to Appeal (BC254,10/04/2004)
Notice of Appeal (BC255,10/04/2004)
Amended Notice of Appeal (BC266,10/18/2004)

12 (DC10,11/10/2004,Page 2,Paragraph 2)
Alec F. Redfearn and Margaret A. Redfearn, (hereafter as "Redfearns") restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255, and Amended Notice of Appeal filed on October 18, 2004 Docket Entry 266, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273.

13 FRAP (3)(c)(1)(C)(4) Contents of Notice of Appeal
(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or failure to name a party **whose intent to appeal is otherwise clear from the notice**. (Emphasis added)

for a Conditional Sales Order. The Appellants on November 19, 2004 filed their Amendment requesting a stay pursuant to 11 U.S.C. § 363(m) and other matters which was filed in both the District Court and Bankruptcy Court. See (DC22,11/19/2004, Page 6, Paragraph 17) [14], (BC298,11/22/2004, Exhibit "A", Page 6, Paragraph 17) [15], and (DC31,12/08/2004, page 11-12, Paragraph 33) [16]

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[14] (DC22,11/19/2004, Page 6, Paragraph 17)
Alec F. Redfearn and Margaret A. Redfearn, restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255 ,and amended Notice of Appeal filed on October 18, 2004 Docket Entry 266, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273, Amendment to MOTION for Leave to Appeal, Reply to ORDER for Emergency Hearing for Huntcliff Homes Association, United States Trustee, and Trustee Robert Silliman filed with this Court during the week of November 16, 2004 and other briefs filed in case 1:04-CV-3245-JEC.

[15] (BC298,11/22/2004, Exhibit "A", Page 6, Paragraph 17)
Alec F. Redfearn and Margaret A. Redfearn, restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255, and Amended Notice of Appeal filed on October 18, 2004 Docket Entry 266, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273, Amendment to MOTION for Leave to Appeal, Reply to ORDER for Emergency Hearing for Huntcliff Homes Association, United States Trustee, and Trustee Robert Silliman filed with this Court during the week of November 16, 2004 and other briefs filed in case 1:04-CV-3245-JEC.

[16] (DC31,12/08/2004, page 11-12, Paragraph 33)
Alec F. Redfearn and Margaret A. Redfearn, restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255, and Amended Notice of Appeal filed on October 18, 2004 Docket Entry 266, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273, Amendment to MOTION for Leave to Appeal, Reply to ORDER for Emergency Hearing for Huntcliff Homes

Argument for Granting Writ of Certiorari

The appellants did file a premature Amended Notice of Appeal on October 18, 2004 (BC266,10/18/2004) and an objection to the trustee's Motion to Sell Two Assets of the Bankruptcy estate (BC262,10/18/2004). The Bankruptcy Court on November 4, 2004 ORDER approved the conditional sale[17] "the final Sales Order" of Two Assets of the Bankruptcy Estate to the Huntcliff Homes Association, Inc. with no objection filed by an omitted creditor. None of the omitted creditors filed an objection..... **therefore, the November 4th ORDER from the bench was a final ORDER of the court**. The Appellants Amended Motion For Leave to Appeal (BC281,11/10/2004, & DC10,11/10/2004) included Paragraph 2 *"Alec F. Redfearn and Margaret A. Redfearn, (hereafter as "Redfearns") restate and reallege the facts stated in Motion for Leave To Appeal filed October 4, 2004 Docket Entry 254, Notice of Appeal filed on October 4, 2004 Docket Entry 255, and Amended Notice of Appeal filed on October 18, 2004 Docket Entry 266, and Transmittal to U. S. District Court filed on November 4, 2004 Docket Entry 273."*. The Notice of Appeal has been amended once again, effective November 10, 2004.

Association, United States Trustee, and Trustee Robert Silliman filed with this Court during the week of November 16, 2004 and other briefs filed in case 1:04-CV-3245-JEC.

17 Bankruptcy Court Order (BC292,11/17/2004)
In the event no objection is filed by an Omitted Creditor within the time set forth herein the Trustee's Sale Motion is approved. In the event an objection is filed as provided herein by an Omitted Creditor then the Court will hold a hearing on said objection in Courtroom 1201, U.S. Bankruptcy Court, 75 Spring Street, SW, Atlanta, Georgia on December 9, 2004 at 11:00 a.m.

The December 9, 2004 hearing and ORDER of December 10, 2004 (BC310,12/10/2004) reconfirmed **the November 9, 2004 Bankruptcy Court approved the sales order**[18]. **No new sales order occurred on December 9th or December 10th, 2004.** Therefore, the Petitioners respectfully challenge the December 21, 2004 Dismissal Order that a Notice of Appeal was required on or after December 9th, which did not occur. (See footnote this page)

The original Motion for Leave to Appeal (BC254,10/04/2004) was a charge of abuse of discretion at the September 2, 2004 hearing. Citation to *In re Delta Resources (see footnote 3 on page5)* an ***appeal to the court of appeals will lie*** since the Motion for Leave to Appeal was not granted [19]. The approved sale of pending litigation claim 04-9104, closing of Adversary Proceeding 04-9104, discharge of the Debtors, and the Motion for United States Leave to Appeal was not granted making this an appealable final order to the Court of Appeals based on the caselaw within *In re Delta Resources*, and other citations within this brief.

The hearing on September 2, 2004 was limited to argument in support of 18 U.S.C. § 3057, is an underlying code violation of Adversary Proceeding 04-9104 and is a crime-fraud exception.

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18 ORDER December 10, 2004 (BC310,12/10/2004) ..... Repeated as a courtesy)
On November 9, 2004, the Court entered an order which conditionally approved the Chapter 7 Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear.

19 ORDER United States District Court (DC50,07/13/2005,Pg 13)
Quite simply, granting leave to appeal the bankruptcy court's denial of the movants' motion to compel would be bad policy.

This Petition should be granted pursuant to Supreme Court Rule 10(c) with no caselaw by any Court of Appeals or the Supreme Court, to the best of the Petitioners knowledge, addresses the jurisdictional law related to a Bankruptcy Court "Conditional Sales Order" and the requirement for a new Notice of Appeal and the pending Motion for Leave to Appeal which was denied.

The only matters at the December 9, 2004 hearing were other Appellants motions and objections. The Motion for Leave to Appeal for the September 2, 2004 hearing was not granted and is now appealable to the United States Court of Appeals citing *In re Delta Resources* 54 F.3d 722, at page 726 (11th Cir. 1995). (Footnote 3, Page 5)

Judgment Sought to be Reviewed

The December 21, 2005 ORDER and the March 2, 2006 Motion for Reconsideration DENIED jurisdiction to the United States Court of Appeals. The Appellants petitioned for a Rehearing *En Banc* and Panel Rehearing which was returned unfiled. The Petitioners file their Writ of Certiorari to the United States Supreme Court. The December 21, 2005 ORDER, attached hereto as Appendix Exhibit "A", Denying Court of Appeals Jurisdiction should be reversed and remanded to hear the appeal, and the March 2, 2006 ORDER, attached hereto as Appendix Exhibit "B", denying the Motion for Reconsideration, The Bankruptcy Court Conditional Sales Order (BC276,11/09/2004) attached hereto as Appendix Exhibit "C". The Submission Sheet from the Bankruptcy Court to the United States District Court (BC274,11/04/2004), attached hereto as Appendix Exhibit "D". The December 10, 2004 Hearing ORDER – *"On November 9, 2004, the Court entered an order which conditionally approved the Chapter 7 Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear."*, attached hereto as Appendix Exhibit "E" (BC310,12/10/2004). The final sales ORDER (from the bench) and with the docketing of the Appeal in the U.S. District Court on November 4, 2004 – December 9th Hearing is irrelevant.

The United States Supreme Court returned original Writ on May 31, 2006, letter attached hereto as Exhibit "F", to comply with the filing requirements of Rule 33.1.

The appellants cited *Traguth v Zuck* 710 F.2nd 90, at Page 95 (1983) and *Ortiz v. McBride* 323 F.3d 191,at Page 194 (2nd Cir.2003) holding that reasonable allowances are to be made protecting pro se litigants from forfeiture of important rights due to their lack of legal training , and *Aurelio O. Gonzalez v. James V. Crosby, Jr. Secretary,*

Florida Dept of Corrections [20] 162 L. Ed. 2d. 480, at page 500 (2005) and the Eleventh Circuit Court's reasoning is too parsimonious based on citations within the Eleventh Circuit.

Respectfully submitted this 8th day of June, 2006.

Respectfully submitted,

By: _____
Alec F. Redfearn, Petitioner

By: _____
Margaret A. Redfearn, Petitioner

Alec F. Redfearn, *Pro se* Petitioner
Margaret A. Redfearn, *Pro se* Petitioner
605 Poinsetta Drive
Satellite Beach, FL 32937
(321) 779-0508

---

20 *Aurelio O. Gonzalez v. James V. Crosby, Jr. Secretary, Florida Dept of Corrections* [20] 162 L. Ed. 2d. 480, at page 500 (2005)
Putting these allegations aside, the Courts reasoning is too parsimonious. While petitioner could have shown even greater diligence by seeking rehearing for a second time and then filing for certiorari, we have never held pro se prisoners to the same standards of counseled litigants. See. e.g. Haines v. Kerner, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. CT. 594 (1972 (per curiam) Footnote 7, Page 500
A petition for certiorari seeking review of a denial COA has an objectively low chance of being granted. .Such a decision is not thought to present a good vehicle for resolving legal issues, and error-correction is a disfavored basis for granting review, particularly in non capital cases..... As for the fact that this Court granted certiorari in Artuz eight days after the Eleventh Circuit denied petitioner a COA, it would be unrealistic to fault petitioner for failing to capitalize on this fortuity. ..... It would be particularly inappropriate to impose such a strict expectation on a pro se prisoner, particularly in the absence of any indication of when, given his circumstances in prison, he could have reasonably been expected to learn of our grant in *Artuz.*

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Appendix-Exhibits
Attached

No. _____
MAILED 6/8/2006 AM

IN THE
Supreme Court of the United States

ALEC F. REDFEARN and
MARGARET A. REDFEARN,
Petitioner(s)
v.
UNITED STATES TRUSTEE, and
CHAPTER 7 TRUSTEE ROBERT SILLIMAN, and
HUNTCLIFF HOMES ASSOCIATION, INC.
Respondent(s)

On Petition For Writ Of Certiorari
To The United States Court of Appeals, Eleventh Circuit
Case 05-15053
JURISDICTIONAL DISMISSAL ORDER
DECEMBER 21, 2005;
MOTION FOR RECONSIDERATION DENIED
MARCH 2, 2006

PETITION FOR WRIT OF CERTIORARI

APPENDIX

Pro se PETITIONER(S)
Alec F. Redfearn, Petitioner
Margaret A. Redfearn, Petitioner
605 Poinsetta Drive
Satellite Beach, FL 32937
(321) 779-0508

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-15053-BB

In Re: ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Debtors.

ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Plaintiffs-Appellants,

versus

UNITED STATES TRUSTEE,
HUNTCLIFF HOMES ASSOCIATION, INC.,
CHAPTER 7 TRUSTEE, for the
Bankruptcy Estate of Alec F. Redfearn
and Margaret N Redfearn,
Defendants-Appellees

Appeal from the United States District Court for the
Northern District of Georgia

Before BLACK and BARKETT, Circuit Judges.

BY THE COUNT:

This appeal is DISMISSED IN PART for lack of jurisdiction and REMANDED IN PART. On July 21, 2004, the district court denied the appellants's motion to appeal the bankruptcy court's September 3, 2004, order denying their motion to compel the United States to investigate facts in a separate adversary proceeding. In that same order, the district court affirmed the bankruptcy court's December 9, 2004, order approving the sale of certain bankruptcy estate assets.

To the extent the appellants seek to challenge the district

A-2

USSC EXHIBIT 6/8/06
tabbies A

BEST AVAILABLE

court's denial of their motion to appeal the bankruptcy court's September 3, 2004 order, we lack jurisdiction. The bankruptcy court's September 3, 2004, order was interlocutory, as it did not end the litigation on the merits. See 28 U.S.C. § 158(d); In re The Charter Co. 778 F.2d 617,621 (11th Cir. 1985); In re Delta Resources, Inc. 54 F.3d 722,726 (11th Cir. 1995). Additionally, the order is not appealable under the collateral-order exception to the final-judgment rule. See Coopers & Lybrand v. Livesay, 437 U.S. 463, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978). Thus, this appeal is DISMISSED as to the appellants's challenge to the district court's denial of their motion to appeal the bankruptcy court's September 3, 2004, interlocutory order.

To the extent the appellants seek to challenge the district court's determination that the bankruptcy court properly approved the sale of certain assets in its December 9, 2004, order, we REMAND this action to the district court. On November 4, 2004, the appellants filed a notice of appeal in the district court challenging the bankruptcy court's September 3, 2004, order. While, the case was pending on appeal in the district court, on December 9, 2004, the bankruptcy court approved the sale of certain bankruptcy assets. Because the bankruptcy court's December 9, 2004, order was entered one month after the appellants's notice of appeal was filed in the district court, it was not within the scope of the appeal that was before the district court. Moreover, the appellate records do not reflect that the appellants filed a notice of appeal challenging the December 9, 2004, order. Accordingly, to the extent this appeal is a challenge to the district court's finding that the bankruptcy court's December 9, 2004, order was proper, this appeal is REMANDED to the district court with instructions for the district court to remove all references to the bankruptcy court's December 9, 2004, order, as it was not properly before the court. The appellants's motion to strike Appellee Chapter 7 Trustee's response to our jurisdictional question is DENIED AS MOOT.

"S/ Docket Stamp:" FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 21 2005
THOMAS K. KAHN, CLERK OF THE COURT
(CA__,12/10/2005)

A-3

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-15053-BB

In Re: ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Debtors.

ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Plaintiffs-Appellants,

versus

UNITED STATES TRUSTEE,
HUNTCLIFF HOMES ASSOCIATION, INC.,
CHAPTER 7 TRUSTEE, for the
Bankruptcy Estate of Alec F. Redfearn
and Margaret A. Redfearn,
Defendants-Appellees

Appeal from the United States District Court for the
Northern District of Georgia

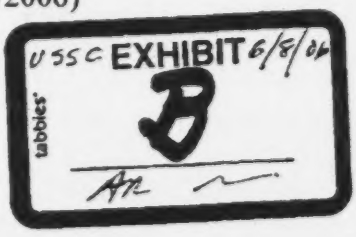
Before BLACK and BARKETT, Circuit Judges.

BY THE COURT:

Petitioner's January 5, 2006, motion for reconsideration of our December 21, 2005, order dismissing in part this appeal for lack of jurisdiction, and remanding in part is DENIED.

"S/ Docket Stamp:" FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 02 2006
THOMAS K. KAHN, CLERK OF THE COURT
(CA__,03/02/2006)

A-4



UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
ALEC F. REDFEARN
MARGARET A. REDFEARN,
Debtors.

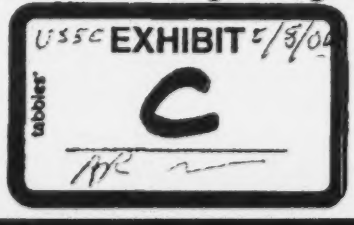
CASE NO. 02-97767-MGD
CHAPTER 7

ORDER

This case is before the Court on various motions filed by Alex F. Redfearn and Margaret A. Redfearn ("Debtors"). On October 7, 2004, Debtors filed Motion for Abandonment of Property of the Estate; Pursuant to 11 U.S.C. § 554(b); Pending Litigation - *Mr. Michael Weinstock, Esq., Mr. Joseph Coomes, Esq., & Weinstock & Scavo* ("Motion to Abandon Weinstock & Scavo Litigation") (Docket No. 257). On October 10, 2004, Debtors filed *Motion for Abandonment of Property of the Estate, Pursuant to 11 US.C. 554(b);Pending Litigation - Huntcliff Homes Association, Inc. (Pre-Petition) for Malicious Prosecution and Abuse of Process* ("Motion to Abandon Huntcliff Homes Litigation") (Docket No. 263). On October 18, 2004, Debtors filed *Objection to Motion to Approve Sale of Two Assets of the Bankruptcy Estate Free and Clear of Liens, Claims and Encumbrances, and Motion for Stay - Docket Entry 259 - Motion to Approve Sale of Two Assets of the Bankruptcy Estate Until the Courts Have Ruled on the Underlying Pending Motion for Reconsideration and/or Notice of Appeal* ("Motion for Stay") (Docket No. 262).

A hearing was held on all of the above-referenced matters, in addition to the Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear of Liens ("Trustee's Motion to Sell") (Docket No.259). before the undersigned bankruptcy judge on November 4, 2004. Present at the hearing were: Debtor, Alex F. Redfearn; Chapter 7 Trustee, Mr. Robert B. Silliman; Counsel for the United States Trustee, Thomas W. Dworschak; and counsel for Huntcliff Homes Association, J. Christopher Simpson. After reviewing the record and listening to arguments made by the

A-5



parties the Court resolves Debtors' motions in the following manner:

IT IS ORDERED that Debtors' Motion to Abandon Weinstock & Scavo Litigation is hereby DENIED without prejudice. The Chapter 7 Trustee shall have ten days to review the litigation and report to the Court as to whether it has any appreciable value for the estate. Upon the filing of the Trustee's report Debtors are free to refile their request for the abandonment of the Weinstock & Scavo litigation.

IT IS FURTHER ORDERED that Debtors' Motion to Abandon Huntcliff Homes Litigation is hereby **DENIED.** As the Court has conditionally approved the Trustee's motion to sell this asset the Court concludes that the litigation does have value to the estate and therefore should not be abandoned. A separate order will be entered approving the Trustee's Motion to Sell.

IT IS FURTHER ORDERED that Debtors' Motion to Stay is also hereby DENIED.

The Clerk of the Court is directed to serve a copy of this Order upon the attached distribution list.

IT IS SO ORDERED.

At Atlanta, Georgia, this 4th day of November, 2004.

"S/_____"
MARY GRACE DIBEL
UNITED STATES BANKRUPTCY JUDGE

A-6

By: "s/File Stamped"
ENTERED ON DOCKET
NOV 9 - 2004
(BC276,11/9/2004)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

TO: Mr. Luther D. Thomas, Clerk
United States District Court

DATE: November 4, 2004

RE: 0297767-MGD
Bankruptcy Case No.

ALEC F. REDFEARN and,
MARGARET A. REDFEARN,
Debtors.

SUBMISSION SHEET

Submitted on:

x Motion for Leave to Appeal by Alec F. Redfearn and Margaret A. Redfearn Filed October 4, 2004
- Doc. No.254
from Order entered September 3,2004
- Doc. No. 246

x Notice of Appeal filed October 4,2004
- Doc. No. 255

x Amended Notice of Appeal filed October 18,2004
- Doc. No. 266

x File date of Order being appealed - September 3,2004
(Doc. No. 246)

Appellants: ALEC F. REDFEARN and MARGARET A. REDFEARN

Appellees: UNITED STATES TRUSTEE and HUNTCLIFF HOMES ASSOCIATION, INC.

x NOTE: Debtors filed Second Original ... Motion For Reconsideration on September 13, 2004, which has not

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been heard by the Bankruptcy Court at this time.
- Doc. No, 253

Contents of Record:

x Filing Fee in amount of $5.00 for Motion For Leave To Appeal was paid on 10/04/2004

x Filing Fee of $250.00 has not been paid for Notice of Appeal.

1 Volume of Record (Docs. 246, 253-256, and 266)

If previous appeal filed list: (NO PREVIOUS APPEALS)
USDC Case Number:
USDC Judge Assignment:
Previous case numbers in related appeal cases:

FROM: W. Yvonne Evans, Clerk
United States Bankruptcy Court

By: "s/_____"
Phyllis J. Keener, Deputy Clerk

By: "s/Filed Stamp"
Filed in U.S. Bankruptcy Court
Atlanta, Georgia
NOV 4 2004
W. Yvonne Evans, Clerk
By: _____
Deputy Clerk

By: "s/USDC Filed Stamp"
Please return a "receiver"
stamped copy showing case number
and Judge Assignment
1 04 CV 3245
USDC Number/Judge

A-8

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
ALEC FLOYD REDFEARN and
MARGARET ANNETTE REDFEARN,
Debtors.

CHAPTER 7
CASE NO. 02-97767

JUDGE DIEHL

ORDER

The above-styled chapter 7 case came on for hearing before the undersigned bankruptcy judge on December 9, 2004. On November 9, 2004, the Court entered an order which conditionally approved the Chapter 7 Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear. Subsequent to the entry of the order the Debtors pro se filed a written counteroffer and numerous objections. At the December 9th hearing Mr. Redfearn stated on the record that he withdrew his objections and counteroffer pertaining to the order entered by the Court on November 9th approving the Trustee's Motion to Sell Two Assets of the Bankruptcy Estate. [1] The Debtors also filed an objection (Docket No. 269), and an amended objection (Docket No. 304), to the Trustee's Interim Report. The Trustee's Interim Report is an administrative requirement of the Office of the United States Trustee and does not have any substantive effect in the case. As such, Mr. Redfearn's Objection is overruled as inappropriate. Accordingly, it is

ORDERED that pursuant to statements made by Mr. Redfearn in open Court on December 9, 2004, the Debtors' objections, and the counteroffer made to the order entered by the

---

[1] Therefore, to the extent that these docket entries pertain to the administration of the bankruptcy case, entries 277, 281, 286, 287, 298, 307 are all hereby considered withdrawn.

A-9

USSC EXHIBIT 6/8/06
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Court on November 9, 2004 approving the Trustee's motion to sell two assets of the estate, are hereby deemed **WITHDRAWN.**

IT IS FURTHER ORDERED that the Debtors' objections to the Trustee's Interim Report are also hereby **OVERRULED.**

At Atlanta, Georgia, this 9th day of December, 2004.

s/ _____"
MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Alec Floyd Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Margaret Annette Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Robert B. Silliman
Awtrey & Parker, PC
250 Lawrence Street
Marietta, GA 30060

Office of the US Trustee
Suite 362
75 Spring Street, SW
Atlanta, GA 30303

By: "s/File Stamped"
ENTERED ON DOCKET
DEC 10 2004
(BC310,12/10/2004)

A-10

SUPREME COURT OF TILE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 205434001

May 31, 2006

Alec Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

RE: Redfearn v. U.S. Trustee

Dear Mr. Redfearn:

The above-entitled petition for a writ of certiorari was postmarked May 23, 2006 and received May 30, 2006. The papers are returned for the following reasons(s):

If you intend to pay the $300.00 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches and comply with the filing requirements of Rule 33.1.

However, if you wish to proceed in forma pauperis, you must also submit a motion for leave to proceed in forma pauperis and a notorized affidavit or declaration of indigency. You may use the enclosed form. Rule 39. You need only to provide an original and 10 copies of the petition and motion for leave to proceed in forma pauperis. Rule 12.2.

Please correct and resubmit as soon as possible. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5. A copy of the corrected petition must be served on opposing counsel.

Your $300.00 check 6166 is herewith returned.

Sincerely, William K. Suter, Clerk
By: "S:/_____"
S. Elliott
(202) 479-3025
Enclosures

A-11
LAST PAGE

APPENDIX

Supreme Court, U.S.
FILED

(2)

051635 MAY 23 2006

OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

ALEC F. REDFEARN and
MARGARET A. REDFEARN,
Petitioner(s)

v.

UNITED STATES TRUSTEE, and
CHAPTER 7 TRUSTEE ROBERT SILLIMAN, and
HUNTCLIFF HOMES ASSOCIATION, INC.
Respondent(s)

On Petition For Writ Of Certiorari
To The United States Court of Appeals, Eleventh Circuit
Case 05-15053-BB
JURISDICTIONAL DISMISSAL ORDER
DECEMBER 21, 2005;
MOTION FOR RECONSIDERATION DENIED
MARCH 2, 2006

PETITION FOR WRIT OF CERTIORARI
APPENDIX – SUPPLEMENT
Exhibits "A" thru "M"

Pro se PETITIONER(S)
Alec F. Redfearn, Petitioner
Margaret A. Redfearn, Petitioner
605 Poinsetta Drive
Satellite Beach, FL 32937
(321) 779-0508

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Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543
(202) 479-3011

Alec F. & Margaret Redfearn v. U.S. Trustee et. al

Appendix (Attached to Original Writ of Certiorari) – Mailed June 8, 2006 - Exhibits

Page	Exhibit	Court, Docket Number & Date Docketed
A-1	"A"	ORDER Jurisdictional Dismissal (CA__,12/21/2005)
A-4	"B"	ORDER Motion for Reconsideration Denied (CA__,03/02/2005)
A-5	"C"	ORDER November 4, 2004 Hearing (BC276,11/09/2004)
A-7	"D"	Submission Sheet – Notice of Docketing of Record – (BC274,11/04/2004)
A-9	"E"	ORDER December 9, 2004 Hearing (BC310,12/10/2004)
A-12	"F"	Letter May 31, 2006 USSC Rule 33.1 (USSC __,05/31/2006)

Note: (Exhibits "A"-"F")

a. The originals Exhibits "A" through "F" were prepared in error pursuant to Supreme Court Rule 33(1)(b) .... *shall be typeset in Roman 11-point or larger type,* using Times New Roman 11-Font which was in error. These exhibits "A" thru "F" have been resubmitted in Times New Roman 12-Font/Point.

Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543
(202) 479-3011

Alec F. & Margaret Redfearn v. U.S. Trustee et. al

Appendix Supplement
Mailed June 19, 2006 - Exhibits

Page	Exhibit	Court, Docket Number & Date Docketed
A-13	"G"	ORDER Motion to Compel United States Attorney Pursuant to 18 U.S.C. § 3057 (BC246,09/03/2004)
A-16	"H"	ORDER November 4, 2004 Hearing Conditional Sale of Bankruptcy Assets Same as Exhibit "C" (BC276,11/09/2004 or BC276,11/04/2004?)
A-18	"I"	FINAL ORDER November 16, 2004 To Approve Sale of Two Assets of the Bankruptcy Estate Free and Clear – November 4, 2004 Hearing & ORDER (BC292,11/17/2004 or BC292,11/16/2004?)
A-23	"J"	ORDER December 9th, 2004 Hearing – ORDER Dated December 9, 2004 & filed December 10, 2004 - Same as Exhibit "E" (BC310,12/10/2004 or BC310,12/09/2004?)
A-26	"K"	ORDER – District Court Case 1:04-CV-3245 – Motion for Leave to Appeal (DC50,07/21/2005)
A-44	"L"	ORDER – Motion For Reconsideration (DC55,08/29/2005)
A-45	"M"	ORDER – Discharge (BC310,12/09/2004)

Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543
(202) 479-3011

A-48 "N" Letter June 13th, 2006 USSC Rule 14.1(i)
(USSC __,06/13/2006)

n/a "" Adversary Proceeding 04-9104
Closed 01/03/2005 by Bankruptcy Court
Clerk (mrg) with No docket Number &
No ORDER from Judge Mary Grace Diehl

Notes: – Appendix-Supplement – All Exhibits Source:[1]

By: _____
Alec F. Redfearn, Petitioner

By: _____
Margaret A. Redfearn, Petitioner

Alec F. Redfearn, *Pro se* Petitioner
Margaret A. Redfearn, *Pro se* Petitioner
605 Poinsetta Drive
Satellite Beach, FL 32937
(321) 779-0508

---

[1] (BC United States Bankruptcy Court, Atlanta Division, Northern District of Georgia Case 02-97767-MGD

(CA United States Court of Appeals Eleventh Circuit Northern District of Georgia Case 05-15053-BB

(DC United States District CourtNorthern District of Georgia Case 1:04-CV-3245-JEC

(USSC Supreme Court of the United States – letter only

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-15053-BB

In Re: ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Debtors.

ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Plaintiffs-Appellants,

versus

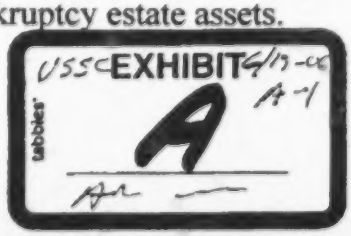
UNITED STATES TRUSTEE,
HUNTCLIFF HOMES ASSOCIATION, INC.,
CHAPTER 7 TRUSTEE, for the
Bankruptcy Estate of Alec F. Redfearn
and Margaret N Redfearn,
Defendants-Appellees

Appeal from the United States District Court for the
Northern District of Georgia

Before BLACK and BARKETT, Circuit Judges.

BY THE COUNT:

This appeal is DISMISSED IN PART for lack of jurisdiction and REMANDED IN PART. On July 21, 2004, the district court denied the appellants's motion to appeal the bankruptcy court's September 3, 2004, order denying their motion to compel the United States to investigate facts in a separate adversary proceeding. In that same order, the district court affirmed the bankruptcy court's December 9, 2004, order approving the sale of certain bankruptcy estate assets.



To the extent the appellants seek to challenge the district court's denial of their motion to appeal the bankruptcy court's September 3, 2004 order, we lack jurisdiction. The bankruptcy court's September 3, 2004, order was interlocutory, as it did not end the litigation on the merits. See 28 U.S.C. § 158(d); In re The Charter Co. 778 F.2d 617,621 (11th Cir. 1985); In re Delta Resources, Inc. 54 F.3d 722,726 (11th Cir. 1995). Additionally, the order is not appealable under the collateral-order exception to the final-judgment rule. See Coopers & Lybrand v. Livesay, 437 U.S. 463, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978). Thus, this appeal is DISMISSED as to the appellants's challenge to the district court's denial of their motion to appeal the bankruptcy court's September 3, 2004, interlocutory order.

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DENIED AS MOOT.

"S/ Docket Stamp:"
Booklet 6.125 x 9.25 FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 21 2005
THOMAS K. KAHN, CLERK OF THE COURT
(CA__,12/21/2005)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 05-15053-BB

In Re: ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Debtors.

ALEC F. REDFEARN,
MARGARET A. REDFEARN,
Plaintiffs-Appellants,

versus

UNITED STATES TRUSTEE,
HUNTCLIFF HOMES ASSOCIATION, INC.,
CHAPTER 7 TRUSTEE, for the
Bankruptcy Estate of Alec F. Redfearn
and Margaret A. Redfearn,
Defendants-Appellees

Appeal from the United States District Court for the
Northern District of Georgia
Before BLACK and BARKETT, Circuit Judges.
BY THE COURT:

Petitioner's January 5, 2006, motion for reconsideration of our December 21, 2005, order dismissing in part this appeal for lack of jurisdiction, and remanding in part is DENIED.

"S/ Docket Stamp:" FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 02 2006
THOMAS K. KAHN, CLERK OF THE COURT
(CA__,03/02/2006)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
ALEC F. REDFEARN
MARGARET A. REDFEARN,
Debtors.

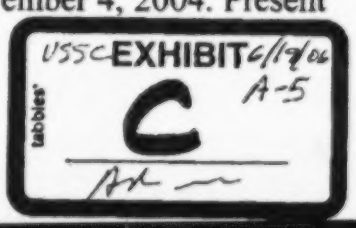
CASE NO. 02-97767-MGD
CHAPTER 7

ORDER

This case is before the Court on various motions filed by Alex F. Redfearn and Margaret A. Redfearn ("Debtors"). On October 7, 2004, Debtors filed Motion for Abandonment of Property of the Estate; Pursuant to 11 U.S.C. § 554(b); Pending Litigation - *Mr. Michael Weinstock, Esq., Mr. Joseph Coomes, Esq., & Weinstock & Scavo* ("Motion to Abandon Weinstock & Scavo Litigation") (Docket No. 257). On October 10, 2004, Debtors filed *Motion for Abandonment of Property of the Estate, Pursuant to 11 US.C. 554(b);Pending Litigation - Huntcliff Homes Association, Inc. (Pre-Petition) for Malicious Prosecution and Abuse of Process* ("Motion to Abandon Huntcliff Homes Litigation") (Docket No. 263). On October 18, 2004, Debtors filed *Objection to Motion to Approve Sale of Two Assets of the Bankruptcy Estate Free and Clear of Liens, Claims and Encumbrances, and Motion for Stay - Docket Entry 259 - Motion to Approve Sale of Two Assets of the Bankruptcy Estate Until the Courts Have Ruled on the Underlying Pending Motion for Reconsideration and/or Notice of Appeal* ("Motion for Stay") (Docket No. 262).

A hearing was held on all of the above-referenced matters, in addition to the Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear of Liens ("Trustee's Motion to Sell") (Docket No.259). before the undersigned bankruptcy judge on November 4, 2004. Present

A-5



at the hearing were: Debtor, Alex F. Redfearn; Chapter 7 Trustee, Mr. Robert B. Silliman; Counsel for the United States Trustee, Thomas W. Dworschak; and counsel for Huntcliff Homes Association, J. Christopher Simpson. After reviewing the record and listening to arguments made by the parties the Court resolves Debtors' motions in the following manner:

IT IS ORDERED that Debtors' Motion to Abandon Weinstock & Scavo Litigation is hereby DENIED without prejudice. The Chapter 7 Trustee shall have ten days to review the litigation and report to the Court as to whether it has any appreciable value for the estate. Upon the filing of the Trustee's report Debtors are free to refile their request for the abandonment of the Weinstock & Scavo litigation.

IT IS FURTHER ORDERED that Debtors' Motion to Abandon Huntcliff Homes Litigation is hereby **DENIED.** As the Court has conditionally approved the Trustee's motion to sell this asset the Court concludes that the litigation does have value to the estate and therefore should not be abandoned. A separate order will be entered approving the Trustee's Motion to Sell.

IT IS FURTHER ORDERED that Debtors' Motion to Stay is also hereby **DENIED.**

The Clerk of the Court is directed to serve a copy of this Order upon the attached distribution list.

IT IS SO ORDERED.

At Atlanta, Georgia, this 4th day of November, 2004.

"S/_____"
MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

By: "s/File Stamped"
ENTERED ON DOCKET
NOV 9 - 2004
(BC276,11/9/2004)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

TO: Mr. Luther D. Thomas, Clerk
United States District Court

DATE: November 4, 2004

RE: 0297767-MGD
Bankruptcy Case No.

ALEC F. REDFEARN and,
MARGARET A. REDFEARN,
Debtors.

SUBMISSION SHEET

Submitted on:

x Motion for Leave to Appeal by Alec F. Redfearn and Margaret A. Redfearn Filed October 4, 2004
- Doc. No.254
from Order entered September 3,2004
- Doc. No. 246

x Notice of Appeal filed October 4,2004
- Doc. No. 255

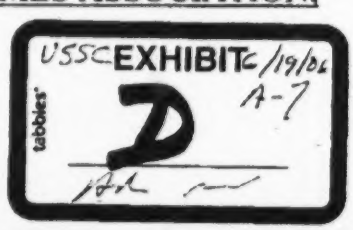
x Amended Notice of Appeal filed October 18,2004
- Doc. No. 266

x File date of Order being appealed - September 3,2004
(Doc. No. 246)

Appellants: ALEC F. REDFEARN and
MARGARET A. REDFEARN

Appellees: UNITED STATES TRUSTEE and
HUNTCLIFF HOMES ASSOCIATION, INC.

A-7



x NOTE: Debtors filed Second Original ... Motion For Reconsideration on September 13, 2004, which has not been heard by the Bankruptcy Court at this time. - Doc. No, 253

Contents of Record:

x Filing Fee in amount of $5.00 for Motion For Leave To Appeal was paid on 10/04/2004

x Filing Fee of $250.00 has not been paid for Notice of Appeal.

1 Volume of Record (Docs. 246, 253-256, and 266)

If previous appeal filed list: (NO PREVIOUS APPEALS)
USDC Case Number:
USDC Judge Assignment:
Previous case numbers in related appeal cases:

FROM: W. Yvonne Evans, Clerk
United States Bankruptcy Court

By: "s/_____"
Phyllis J. Keener, Deputy Clerk

By: "s/Filed Stamp"
Filed in U.S. Bankruptcy Court
Atlanta, Georgia
NOV 4 2004
W. Yvonne Evans, Clerk
By: "_____"
Deputy Clerk

By: "s/USDC Filed Stamp"
Please return a "receiver"
stamped copy showing case number
and Judge Assignment
1 04 CV 3245
USDC Number/Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
ALEC FLOYD REDFEARN and
MARGARET ANNETTE REDFEARN,
Debtors.

CHAPTER 7
CASE NO. 02-97767

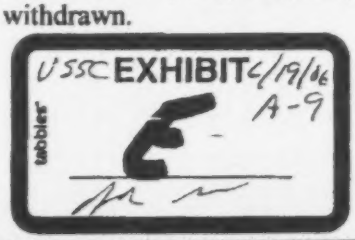
JUDGE DIEHL

ORDER

The above-styled chapter 7 case came on for hearing before the undersigned bankruptcy judge on December 9, 2004. On November 9, 2004, the Court entered an order which conditionally approved the Chapter 7 Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear. Subsequent to the entry of the order the Debtors pro se filed a written counteroffer and numerous objections. At the December 9th hearing Mr. Redfearn stated on the record that he withdrew his objections and counteroffer pertaining to the order entered by the Court on November 9th approving the Trustee's Motion to Sell Two Assets of the Bankruptcy Estate. [1] The Debtors also filed an objection (Docket No. 269), and an amended objection (Docket No. 304), to the Trustee's Interim Report. The Trustee's Interim Report is an administrative requirement of the Office of the United States Trustee and does not have any substantive effect in the case. As such, Mr. Redfearn's Objection is overruled as inappropriate. Accordingly, it is **ORDERED** that pursuant to

---

[1] Therefore, to the extent that these docket entries pertain to the administration of the bankruptcy case, entries 277, 281, 286, 287, 298, 307 are all hereby considered withdrawn.



statements made by Mr. Redfearn in open Court on December 9, 2004, the Debtors' objections, and the counteroffer made to the order entered by the Court on November 9, 2004 approving the Trustee's motion to sell two assets of the estate, are hereby deemed **WITHDRAWN.**

IT IS FURTHER ORDERED that the Debtors' objections to the Trustee's Interim Report are also hereby **OVERRULED.**

At Atlanta, Georgia, this 9th day of December, 2004.

s/ _____"
MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

DISTRICTION LIST

Alec Floyd Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Margaret Annette Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Robert B. Silliman
Awtrey & Parker, PC
250 Lawrence Street
Marietta, GA 30060

Office of the US Trustee
Suite 362
75 Spring Street, SW
Atlanta, GA 30303

By: "s/File Stamped"

ENTERED ON DOCKET
DEC 10 2004
(BC310,12/10/2004)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 205434001

May 31, 2006

Alec Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

RE: Redfearn v. U.S. Trustee

Dear Mr. Redfearn:

The above-entitled petition for a writ of certiorari was postmarked May 23, 2006 and received May 30, 2006. The papers are returned for the following reasons(s):

If you intend to pay the $300.00 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches and comply with the filing requirements of Rule 33.1.

However, if you wish to proceed in forma pauperis, you must also submit a motion for leave to proceed in forma pauperis and a notorized affidavit or declaration of indigency. You may use the enclosed form. Rule 39. You need only to provide an original and 10 copies of the petition and motion for leave to proceed in forma pauperis. Rule 12.2.

Please correct and resubmit as soon as possible. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5. A copy of the corrected petition must be served on opposing counsel.

Your $300.00 check 6166 is herewith returned.

Sincerely, William K. Suter, Clerk
By: "S:/_____"
S. Elliott
(202) 479-3025

Enclosures

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RE:
ALEC F. REDFEARN and
MARGARET A. REDFEARN,
Debtors.

CHAPTER 7
CASE NO. 02-97767

JUDGE DIEHL

ORDER DENYING DEBTORS' MOTION TO COMPEL UNITED STATES ATTORNEY PURSUANT TO 18 U.S.C. §3057 TO INVESTIGATE THE FACTS IN ADVERSARY PROCEEDING 04-9104

A hearing on the Debtors' Motion to Compel United States Attorney Pursuant to 18 U.S.C. § 3057 to Investigate the Facts in Adversary Proceeding 04-9104 was held on September 2, 2004. Present at the hearing were Alec F. Redfearn, Robert B. Silliman, Esq., chapter 7 trustee, Laura Bonander, Assistant United States Attorney, and Guy G. Gebhardt, Assistant United States Trustee.

Upon review of the record and consideration of the comments of Mr. Redfearn and counsel, it is hereby

ORDERED AND ADJUDGED that the Debtors' Motion is DENIED.

SO ORDERED, on this the 3rd day of September, 2004.

"S/_____"
MARY GRACE DIEHL, JUDGE
UNITED STATES BANKRUPTCY COURT

(Signatures continued on following page)

Prepared by:
"S/_____"
Guy G. Gebhardt
Assistant United States Trustee
Georgia Bar No. 288550
Office of U. S. Trustee
362 Richard Russell Bldg.
75 Spring St. SW
Atlanta, GA 30303
(404) 331-4437

The Clerk is requested to serve a copy of this order upon:
Alec F. Redfearn
Margaret A. Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Laura Bonander
Assistant United States Attorney
5th Floor, Richard B. Russell Building
75 Spring Street
Atlanta, GA 30303

Robert B. Silliman, Esq.
P.O. Box 997
Marietta, GA 30061

Guy G. Gebhardt
Assistant United States Trustee
362 Richard B. Russell Building
75 Spring Street
Atlanta, GA 30303

J. Christopher Simpson, Esq.
Simpson Law Offices, LLP
One Securities Center, Suite 300
3490 Piedmont Road, NE
Atlanta, GA 30305

By: "s/File Stamped"
ENTERED ON DOCKET
SEPT 3 2004
(BC246,09/03/2004)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

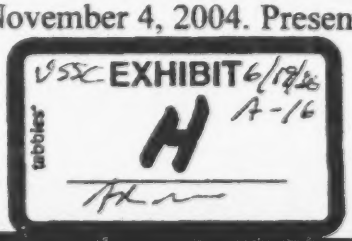
IN RE:
ALEC F. REDFEARN
MARGARET A. REDFEARN,
Debtors.

CASE NO. 02-97767-MGD
CHAPTER 7

ORDER

This case is before the Court on various motions filed by Alex F. Redfearn and Margaret A. Redfearn ("Debtors"). On October 7, 2004, Debtors filed Motion for Abandonment of Property of the Estate; Pursuant to 11 U.S.C. § 554(b); Pending Litigation - *Mr. Michael Weinstock, Esq., Mr. Joseph Coomes, Esq., & Weinstock & Scavo* ("Motion to Abandon Weinstock & Scavo Litigation") (Docket No. 257). On October 10, 2004, Debtors filed *Motion for Abandonment of Property of the Estate, Pursuant to 11 US.C. 554(b);Pending Litigation - Huntcliff Homes Association, Inc. (Pre-Petition) for Malicious Prosecution and Abuse of Process* ("Motion to Abandon Huntcliff Homes Litigation") (Docket No. 263). On October 18, 2004, Debtors filed *Objection to Motion to Approve Sale of Two Assets of the Bankruptcy Estate Free and Clear of Liens, Claims and Encumbrances, and Motion for Stay - Docket Entry 259 - Motion to Approve Sale of Two Assets of the Bankruptcy Estate Until the Courts Have Ruled on the Underlying Pending Motion for Reconsideration and/or Notice of Appeal* ("Motion for Stay") (Docket No. 262).

A hearing was held on all of the above-referenced matters, in addition to the Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear of Liens ("Trustee's Motion to Sell") (Docket No.259). before the undersigned bankruptcy judge on November 4, 2004. Present



at the hearing were: Debtor, Alex F. Redfearn; Chapter 7 Trustee, Mr. Robert B. Silliman; Counsel for the United States Trustee, Thomas W. Dworschak; and counsel for Huntcliff Homes Association, J. Christopher Simpson. After reviewing the record and listening to arguments made by the parties the Court resolves Debtors' motions in the following manner:

IT IS ORDERED that Debtors' Motion to Abandon Weinstock & Scavo Litigation is hereby DENIED without prejudice. The Chapter 7 Trustee shall have ten days to review the litigation and report to the Court as to whether it has any appreciable value for the estate. Upon the filing of the Trustee's report Debtors are free to refile their request for the abandonment of the Weinstock & Scavo litigation.

IT IS FURTHER ORDERED that Debtors' Motion to Abandon Huntcliff Homes Litigation is hereby **DENIED.** As the Court has conditionally approved the Trustee's motion to sell this asset the Court concludes that the litigation does have value to the estate and therefore should not be abandoned. A separate order will be entered approving the Trustee's Motion to Sell.

IT IS FURTHER ORDERED that Debtors' Motion to Stay is also hereby **DENIED**.

The Clerk of the Court is directed to serve a copy of this Order upon the attached distribution list.

IT IS SO ORDERED.

At Atlanta, Georgia, this 4th day of November, 2004.

"S/_____"
MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

By: "s/File Stamped"
ENTERED ON DOCKET
NOV 9 - 2004
(BC276,11/9/2004)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
ALEC REDFEARN and
MARGARET A. REDFEARN,
Debtors

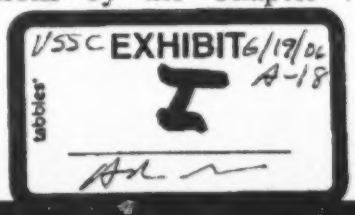
CASE #02-97767-MGD
CHAPTER 7
JUDGE DIEHL

ORDER ON MOTION TO APPROVE SALE OF TWO ASSETS OF THE BANKRUPTCY ESTATE FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

A hearing was held on the Trustee's Motion to Approve Sale of Two Assets of the Bankruptcy Estate Free and Clear of Liens and Encumbrances (the "Trustee's Sale Motion") on November 4, 2004 at 11:00 a.m. Attached as an Exhibit to the Trustee's sale Motion is an Agreement of Settlement and Compromise and Release of all Claims (the "Settlement Agreement") which set forth the terms of a proposed contract between Huntcliff Homes Association, Inc. and the Chapter 7 Trustee. All parties in interest except Nicholas Chilivis of Chilivis, Bever and Larkins and S. Andrew Shuping representing Bankers Trust Company of California (the "Omitted Creditors") were provided with Notice of the Trustee's Sale Motion and of the date, time and place of hearing. The United States Trustee was also notified of the date, time and place of the hearing.

Present at the hearing was Pro Se Debtor Alec F. Redfearn, Robert B. Silliman, the Chapter 7 Trustee. Thomas Dworschak, Esquire of the Office of the United States Trustee and J. Christopher Simpson, attorney for Huntcliff Homes Association.

The Court heard presentations by the Chapter 7



Trustee and J. Christopher Simpson with respect to approval of the Trustee's Sale Motion and Debtor Alec Redfearn in opposition thereto. Mr. Dworschak spoke in support of the role of Chapter 7 Trustee's role in the sale of bankruptcy estate assets.

After consideration of the Trustee's Sale Motion and the presentation by the Chapter 7 Trustee, the attorney for Huntcliff, the United States Trustee's representative and Debtor Alec Redfearn and for good cause shown the Court enters the following Order:

1. The Court approves the Trustee's Sale Motion with the exception of paragraph 7 of the Settlement Agreement. Paragraph 7 is not approved by the Court. By signature of the attorney for Huntcliff Homes Association to this Order, Huntcliff agrees to the deletion of paragraph 7 of the previously submitted Settlement Agreement which shall now consist of paragraphs 1 through 6 exclusively. Court approval of paragraphs I - 6 of the Settlement Agreement is also subject to the provisions of paragraph 2 of this Order.

2. The Chapter 7 Trustee is directed to serve the original Notice with regard to Trustee's Motion to Approve Sale of Two Assets of the Bankruptcy Estate Free and Clear of Liens, Claims and Encumbrances along with this Order on Omitted Creditors Nicholas Chilivis of Chilivis, Bever and Larkins and S. Andrew Shuping representing Bankers Trust Company of California within three (3) days of the entry of this Order. If the Omitted Creditors have an objection to the approval of the Trustee's Sale Motion such objection must be filed in writing with the Clerk of Court, U.S. Bankruptcy Court, Richard B. Russell Building, 75 Spring Street, SW, Atlanta, Georgia 30303 and serve a copy on the Chapter 7 Trustee, Robert B. Silliman, 250 Lawrence Street, Marietta, GA 30060 on or before twenty (20) days from service of this Order. In the event no objection is filed by an Omitted Creditor within the time set forth herein the Trustee's Sale Motion is approved. In the event an objection is filed as provided herein by an Omitted Creditor then the Court will

hold a hearing on said objection in **Courtroom 1201, U.S. Bankruptcy Court, 75 Spring Street, SW, Atlanta, Georgia on December 9, 2004 at 11:00 a.m.**

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

This 16th day of November 2004.

"s/_____"
MARY GRACE DIEHL
United States Bankruptcy Judge

Prepared by:
"s/_____"
Robert B. Silliman
Georgia State Bar #646000
Awtrey & Parker, P.C.
250 Lawrence Street
Marietta, GA 30060
770 424-8000 x 201

Consented to:
"s/_____"
J. Christopher Simpson (signed by R. Silliman w/express permission)
Georgia State Bar #647800
Attorney for Huntcliff Homes Association
3490 Piedmont Road, Suite 300
Atlanta, GA 30305
404 266-2421

By: "s/File Stamped"
ENTERED ON DOCKET
NOV 17 2004
(BC292,11/17/2004)

DISTRIBUTION LIST

Office of the U.S. Trustee
362 Richard B. Russell Building
75 Spring Street, SW
Atlanta, GA 30303

J. Christopher, Simpson, Esquire
Simpson Law Offices, LLP
1 Securities Centre, Suite 300
3490 Piedmont Road, NE
Atlanta, GA 30305

Robert B. Silliman, Esquire
Awtrey & Parker, P.C.
250 Lawrence Street
Marietta, GA 30060

Alec and Margaret Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Nicholas Chilivis, Esquire
1127 Maple Drive, NE
Atlanta, GA 30305-2403

Andrew Shuping, Esquire
6529 Riverdale Road
Riverdale, GA 30274-1646

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
ALEC FLOYD REDFEARN and
MARGARET ANNETTE REDFEARN,
Debtors.

CHAPTER 7
CASE NO. 02-97767

JUDGE DIEHL

ORDER

The above-styled chapter 7 case came on for hearing before the undersigned bankruptcy judge on December 9, 2004. On November 9, 2004, the Court entered an order which conditionally approved the Chapter 7 Trustee's Motion to Sell Two Assets of the Bankruptcy Estate Free and Clear. Subsequent to the entry of the order the Debtors pro se filed a written counteroffer and numerous objections. At the December 9th hearing Mr. Redfearn stated on the record that he withdrew his objections and counteroffer pertaining to the order entered by the Court on November 9th approving the Trustee's Motion to Sell Two Assets of the Bankruptcy Estate. [1] The Debtors also filed an objection (Docket No. 269), and an amended objection (Docket No. 304), to the Trustee's Interim Report. The Trustee's Interim Report is an administrative requirement of the Office of the United States Trustee and does not have any substantive effect in the case. As such, Mr. Redfearn's Objection is overruled as inappropriate. Accordingly, it is **ORDERED** that pursuant

---

[1] Therefore, to the extent that these docket entries pertain to the administration of the bankruptcy case, entries 277, 281, 286, 287, 298, 307 are all hereby considered withdrawn.

A-23

VSSC EXHIBIT 6/19/06 A-23
J
tabbies

to statements made by Mr. Redfearn in open Court on December 9, 2004, the Debtors' objections, and the counteroffer made to the order entered by the Court on November 9, 2004 approving the Trustee's motion to sell two assets of the estate, are hereby deemed **WITHDRAWN.**

IT IS FURTHER ORDERED that the Debtors' objections to the Trustee's Interim Report are also hereby **OVERRULED.**

At Atlanta, Georgia, this 9th day of December, 2004.

s/ _____"
MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Alec Floyd Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Margaret Annette Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

Robert B. Silliman
Awtrey & Parker, PC
250 Lawrence Street
Marietta, GA 30060

Office of the US Trustee
Suite 362
75 Spring Street, SW
Atlanta, GA 30303

By: "s/File Stamped"

ENTERED ON DOCKET
DEC 10 2004
(BC310,12/10/2004)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALEC F. REDFEARN and
MARGARET
Movants,

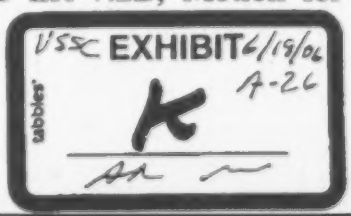
v.

UNITED STATES TRUSTEE and
TRUSTEE ROBERT SILLIMAN,
Respondents.

CIVIL ACTION NO.
1:04-CV-3245-JEC

ORDER

This case is presently before the Court on Motion for Emergency Hearing, Motion for Stay, Settlement & Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate [4]; Amendment Motion for Leave to Appeal Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets [10]; Second Motion for Emergency Hearing, Motion for Stay Settlement & Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate Order Filed November 9, 2004 Approving Conditional Sale [11]; Motion for Permission of the U.S. District Court to Provide Additional Evidence of Illegal Activity Pursuant to 18 U.S.C. § 3057 Related to Case 02-97767-mgd. and District Court Local Rule 79.1C(l), Interference with [ORDER PAGE 1] an Officer of the Court & 18 U.S.C. § 201, Re: Court Reporter Amelia Lopez, Brown Reporting Inc. [41]; Motion for Emergency Hearing Pursuant to LR 7.2B, Motion for



Stay Pursuant to 11 U.S.C. § 363(m) Settlement & Compromise Agreement, Sale of Two Assets of the Bankruptcy Estate to the Huntcliff Homes Association, Inc. [43]; AND Permission Requested to Submit Revised CD Including Docket Entry 019 Adversary Proceeding 02-9408, Amendment to Original Exhibits Supplied to the Court, Appellants Exhibits to United States District Court United States District Court case 1:04-cv-3245-JEC Pursuant to 11 U.S.C. § 8006 [44].

The Court has reviewed the record and the arguments of the parties and, for the reasons set out below, concludes that Motion for Emergency Hearing, Motion for Stay, Settlement & Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate [4] should be **DENIED *in* part and DENIED as moot in part;** Amendment Motion for Leave to Appeal Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets [10] should be **DENIED in part and DENIED as moot in part**; Second Motion for Emergency Hearing, Motion for Stay Settlement & Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate Order Filed November 9, 2004 Approving Conditional Sale [11] should be **DENIED in part and DENIED as moot in part;** Motion [ORDER PAGE 2] for Permission of the U.S. District Court to Provide Additional Evidence of Illegal Activity Pursuant to 18 U.S.C. § 3057 Related to Case 02-97767-mgd and District Court Local Rule 79.1C(1), Interference with an Officer of the Court & 18 U.S.C. § 201, Re: Court Reporter Amelia Lopez, Brown Reporting Inc. [41] should be **DENIED**; Motion for Emergency Hearing Pursuant to LR 7.2B, Motion for Stay Pursuant to 11 U.S.C. § 363(m) Settlement & Compromise Agreement, Sale of Two Assets of the Bankruptcy Estate to the Huntcliff Homes Association, Inc. [43] should be **DENIED in part and DENIED as moot in part**; AND Permission Requested to

Submit Revised CD Including Docket Entry 019 Adversary Proceeding 02-9408, Amendment to Original Exhibits Supplied to the Court, Appellants Exhibits to United States District Court United States District Court case 1:04-CV-3245-JEC Pursuant to 11 U.S.C. § 8006 [44] should be **DENIED**.

BACKGROUND

This case originates from the United States Bankruptcy Court for the Northern District of Georgia. As set forth more explicitly in this Court's Order dispensing of related case 1:05-CV-0412, movants in this action, Alec and Margaret Redfearn, are pro se litigants who originally filed for Chapter 11 bankruptcy on August 01, 2002. The filing of the bankruptcy action was largely precipitated by certain zoning and variance disputes between the movants and the Huntcliff Homeowners Association, Inc. ("Huntcliff") concerning a home the [ORDER PAGE 3] movants attempted to construct in the Huntcliff subdivision. After their Chapter 11 languished for approximately two years without confirmation of a plan of reorganization, the movants' case was converted to a Chapter 7 bankruptcy action on June 8, 2004. The movants received their Chapter 7 discharge from bankruptcy on December 9, 2004.

The present action was initiated on November 4, 2004. (Submission Sheet [1] at 1.) As evidenced by the Court's introduction of the matters currently before it, the pending motions filed by the pro se movants are awkwardly styled and repetitive. The motion for hearing, motion to sell two assets of the bankruptcy estate, and motion for stay made in Docket Entry No. 4 are the same motion for hearing, motion to sell two assets of the bankruptcy estate, and motion for stay made in Docket Entry No. 11. Similarly, the motion for hearing and motion for stay made in Docket Entry No. 43 are the same motion for hearing and motion for stay made in Docket Entry No. 4 and Docket Entry No. 11. After accounting for these repetitive motions, the Court really is

asked to consider just six issues: (1) motion for hearing [Docket Entry Nos. 4, 11, 43]; (2) motion to sell two assets of the bankruptcy estate [Docket Entry Nos. 4, 11]; (3) motion for stay [Docket Entry Nos. 4, 11, 43]; (4) motion for leave to appeal [Docket Entry No.. 10]; (5) motion for leave to file additional evidence of illegal activity [Docket Entry No. 41]; and (6) motion for [ORDER PAGE 4] permission to submit revised CD [Docket Entry No. 44] . As it is the basis for the Court's jurisdiction over this matter, [1] the Court will begin its discussion by reviewing the pending motion for leave to appeal.

DISCUSSION

I. Motion for Leave to Appeal

The Court has reviewed all of the pleadings and exhibits submitted in this case with an understanding that the movants are proceeding pro se. Even without the repetitive filings, it is extremely difficult to determine exactly what the movants seek leave to appeal. In the end, as best the Court can decipher, the movants seek leave to appeal essentially two decisions of the bankruptcy court. First, the movants seek leave to appeal the bankruptcy court's denial of the movants Motion to Compel United States Attorney Pursuant to 18 U.S.C. § 3057 to Investigate the Facts in Adversary Proceeding 04-9104. *(See* Notice of Appeal ("Appeal") [BD-255] at 1.) Second, the movants seek leave to appeal the bankruptcy court's order approving the sale of two assets of the bankruptcy estate to the movants' [ORDER PAGE 5] adversary Huntcliff. (See Amendment Motion for Leave to

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[1] "The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and decrees; (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time period referred to in section 1121 of such title; and (3) with leave of the court, from other interlocutory orders and decrees." 29 U.S.C. §158 (a) (2005).

Appeal Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets ("Motion to Appeal") [10] at 2; Motion for Emergency Hearing Pursuant to LR 7.2B, Motion for Stay Pursuant to 11 U.S.C. §363(m) Settlement & Compromise Agreement, Sale of Two Assets of the Bankruptcy Estate to the Huntcliff Homes Association, Inc. ("Post-Order Motion") [43] at 2.)

A. Interlocutory or Final

As a preliminary matter, the Court must determine whether the two orders which the movants seek leave to appeal are interlocutory or final orders of the bankruptcy court. Pursuant to 28 U.S.C. § 158(a), a bankruptcy litigant may appeal a final judgment or order of the bankruptcy court by right, but must seek leave to appeal an interlocutory order. Normally, by virtue of the movants having filed a motion for leave to appeal, the Court could assume that it was dealing with an interlocutory order. However, the Court's review of the filings made in this case strongly suggest that the movants do not understand, and have not consciously categorized, their appeal as either interlocutory or final.

As established by common law, a final judgment is one which disposes of an entire subject leaving nothing left to be done save the [ORDER PAGE 6] execution of the decree, while an interlocutory order or decree only decides some intervening matter pertaining to the cause. See *Catlin v. United States,* 324 U.S. 229 (1945) . In bankruptcy litigation, '[t]he determination of whether an order is final or interlocutory is often a difficult one to make," because a bankruptcy case is really an aggregation of individual controversies, all of which must be resolved before a bankruptcy distribution can be made. Collier On Bankruptcy - 15TH ED. REVISED ¶ 5.07. For this reason, "the concept of finality in bankruptcy is broader and more flexible than in

ordinary civil litigation." *Id.* In this circuit, "finality of bankruptcy orders cannot be limited to the last order concluding the bankruptcy case as a whole." *Martin Bros. Toolmakers, Inc. v. Indus. Dev. Bd. of the City of Huntsville,* 796 F.2d 1435, 1437 (11th Cir. 1986). Instead, "the statutory requirement of finality is a flexible concept, grounded in the practicalities of the situation." Id. Consequently, "any order within a bankruptcy case which concludes a particular adversary proceeding should be deemed final and reviewable." *Id.*

B. Bankruptcy Court' s Denial of Motion to Compel

The movants seek leave to appeal the bankruptcy court's denial of the movants' Motion to Compel United States Attorney Pursuant to 18 U.S.C. § 3057 to Investigate the Facts in Adversary Proceeding 04-9104. (Appeal at 1.) Briefly, in the underlying motion to compel the movants asked the bankruptcy court to order the bankruptcy trustee to [ORDER PAGE 7] refer Huntcliff to the United States Attorney's office for investigation of possible criminal actions on the part of Huntcliff in bankruptcy adversary proceeding 04-9104.[2] (Mot. to Compel U.S. Att'y Pursuant to 18 U.S.C. § 3057 to Investigate the Facts in Adversary Proceeding 04-9104; Defendant: Huntcliff Homes Association, Inc. ("Bankr. Compel") [BD-231] at 1.) The movants contended then, as they do now, that such a referral

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2 In bankruptcy adversary proceeding 04-9104 the movants filed a complaint against Huntcliff alleging, among other illegal acts, that Huntcliff had interfered with the sale of the movants' property by engaging in malicious prosecution and abuse of process in a civil suit thereby causing damages to the debtors and unsecured creditors. (Compl. to Determine Malicious Prosecution in a Civil Case and Abuse of Process; Interference with the Sale of Debtors Property; Alleged Illegal Acts by the Huntcliff Homes Association, Inc.; and an Award for Damages & Prosecution by U.S. Att'y ("Compl. Malicious") [BD-183] at 10.)

was mandatory under 18 U.S.C. § 3057. [3]

On September 2, 2004, the bankruptcy court held a hearing on the movants' motion to compel referral to, and investigation by, the U.S. 18 U.S.C. § 3057 (a) (2005). [ORDER PAGE 8] Attorney. (Tr. of Proceedings before the Hon. Mary Grace Diehl, September 2, 2004 ("Tr. 9/2") [493 at 1.) There the United States Trustee argued that 18 U.S.C. S 3057 does not require the U.S. Attorney to conduct a criminal investigation into Adversary Proceeding 04-9104 because the condition precedent to a referral--reasonable grounds for believing that there has been a violation of the laws of the United States -- has not been met. *(Id.* at 7.) The trustee also pointed out that, regardless of whether the court or the trustee makes a referral, the movants can, at any time, make their own referral to the U.S. Attorney, the F.B.I., or any other law enforcement agency if they believe a crime had been committed. *(Id.* at 8.) The U.S. Attorney's office, sitting in on the hearing in the event a referral was made, adopted the arguments made by the United States Trustee. *(Id.* at 11.)

Having heard arguments from both sides, the bankruptcy court explained, "I think that what the statute that you are relying on says, it requires as a precondition either to a referral by me or the U.S. Attorney's Office is that there be reasonable grounds to believe that a Federal crime has been committed . . ." *(Id.)* The bankruptcy court went on to say, "if you believe there is reasonable grounds, you can make the

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[3] The relevant statutory language provides:

Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or others laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. 18 U.S.C. § 3057 (a) (2005).

referral . . . [a]s I said, I can't tell you what to do, but I have not seen anything in this case or reading anything in this case that leads me to believe there is any grounds for me to make a [ORDER PAGE 9] referral . . ." *(Id.* at 12.) On September 3, 2004, the bankruptcy court issued an order denying the movants' motion to compel (Order [BD-246] at 1.)

On these facts, the Court concludes that the September 3, 2004 order of the bankruptcy court was an interlocutory order, not a final judgment. The denial of the movants' motion to compel was collateral to, rather than a conclusion of, Adversary Proceeding 04-9104. Because it is interlocutory, the Court may only consider an appeal of the September 3rd order after granting leave to do so. See 28 U.S.C. § 158 (a) (2005)

Though the decision whether to grant leave to appeal from an interlocutory order of the bankruptcy court is left to the discretion of the district court, district courts have, with few exceptions, utilized 28 U.S.C. § 1292 in determining the proper scope of interlocutory review over bankruptcy court decisions. 28 U.S.C. §1292 governs interlocutory appeals from federal district courts to the courts of appeals. 6 Norton Bankr. Law and Practice 2d § 143:15. Applying § 1292 (b), a district court should grant leave to appeal an interlocutory order of the bankruptcy court only if: (1) the order involves a controlling question of law; (2) there is substantial ground for difference of opinion; and (3) an immediate appeal would materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b); See *In re Charter Co. v. Prudential Ins. Co. of* [ORDER PAGE 10] *America*, 778 F.2d 617, 620 n.5 (11th Cir. 1985) (endorses use by district court of § 1292's three-part test in determining whether to exercise discretionary authority to grant leave to appeal an interlocutory order of the bankruptcy court); *see also In re Slater Corp.*, No. 95-7118CIV-ARONOVITZ, 1996 WL 895221, at *1 (S.D. Fla. Oct. 28, 1996)

Recently, in articulating general principles about when courts should exercise their discretionary authority to

grant appeals under § 1292(b), the Eleventh Circuit has emphasized that such interlocutory appeals should be allowed only in "exceptional cases." *McFarlin v. Conseco Services, LLC,* 381 F.3d 1251, 1256 (11th 2004) (internal quotations and citations omitted) . To assist appellate courts in deciding when ***not*** to grant interlocutory appeal the Eleventh Circuit offered the following words of guidance:

> *The antithesis of a proper § 1292(b) appeal is one that turns on whether there is a genuine issue of fact or whether the [trial] court properly applied settled law to the facts or evidence off a particular case. In determining whether to grant review, [the appellate court] should ask if there is substantial dispute about the correctness of any of the pure law premises the [trial court] actually applied in its reasoning leading to the order sought to be appealed. The legal question must be stated at a high enough level of abstraction to lift the question out of the details of the evidence or facts of a particular case and give it general relevance to other cases in the same area of law. And the answer to that question must substantially reduce the amount of litigation left in the case. Even when all of those factors are present, the [appellate court] has discretion to turn down a § 1292(b) appeal. And we will sometimes do so. The proper division of labor* [ORDER PAGE 11] *between the [trial courts] and the [appellate courts] and the efficiency of judicial resolution of cases are protected by the final judgment rule, and are threatened by too expansive use of the §1292(b) exception to it. Because permitting piecemeal appeals is bad policy, permitting liberal use of § 1292(b) interlocutory appeals is bad policy. Id.* at 1259 (emphasis added)

Given these standards, the Court concludes that the September 3rd order of the bankruptcy court from which the movants seek leave to appeal is not the kind of "exceptional"

decision that justifies an interlocutory appeal to the district court. First, the order does not involve a controlling question of law. Rather, the judge applied the plain language of the only statute at issue to find that there were no "reasonable grounds" to justify making a referral to the U.S. Attorney. Second, the plain language of 18 U.S.C. § 3057 does not provide grounds for, nor create, a substantial ground for difference of opinion. The bankruptcy court, the United States Trustee, and the U.S. Attorney all agreed on the meaning and application of the statute. The only difference in opinion came from the pro se movants' misinterpretation of the statute. Third, an immediate appeal will not materially advance the ultimate termination of the underlying bankruptcy litigation. To the contrary, an interlocutory appeal of the bankruptcy court's September 3rd order would cause further unnecessary delay in an already drawn out bankruptcy proceeding. This Court would not be addressing questions of law applicable to this case [ORDER PAGE 12] and others, but, rather, the bankruptcy court's findings of fact in this case which are not to be set aside unless clearly erroneous. See BANKE. RULE 8013. Quite simply, granting leave to appeal the bankruptcy court's denial of the movants' motion to compel would be bad policy. The Court **DENIES** Amendment Motion for Leave to Appeal Filed on October 18, 2004, Motion for Emergency hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets [10], as to the September 3, 2004, order of the bankruptcy court.

C. Bankruptcy Court's Approval of Sale of Two Assets of the Bankruptcy Estate to Huntcliff

The movants also seek leave to appeal the bankruptcy court's December 10, 2004, order approving the sale of two

assets of the bankruptcy estate to Huntcliff. [4] (Post-Order Motion at 2.) The two assets at issue were sold to Huntcliff for $30,000 and consist of pending litigation claims against Huntcliff that belonged to the estate, sold for $27,500, and the website www.HuntcliffHomes.com, sold for $2,500. (Objection to the Order (Docket Entry 276) and Pending Separate Order Approving Conditional Sale of the Hon. Bankr. J. Mary Grace Diehl of Two Assets of the Bankr. Estate Including Two Pending [ORDER PAGE 13] Litigation Claims ("Objection to Sale") [13] at 4, 6.) The movants do not object to the sale of the website to Huntcliff for $2,500. *(Id.* at 6.) Thus, the only possible issue for appeal is the bankruptcy court's decision to approve Huntcliff's purchase of the litigation claims pending against them.

Before conditionally, and finally, approving the sale of two assets of the bankruptcy estate to Huntcliff the bankruptcy court held a hearing on the matter. (See Tr. of Proceedings before the Hon. Mary Grace Diehl, November 4, 2004 ("Tr. 11/4"), attach. as Ex. G to Objection to Sale.) In that hearing the movants expressed the same objection to the sale that they have today: simply, that the value of the litigation against Huntcliff to the estate far exceeds $27,500. [5] *(Id.* at 18-19.) In lieu of selling the pending litigation to Huntcliff, the movants asked the bankruptcy court to approve an agreement whereby a certain portion of any future,

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[4] A conditional order approving the sale of both assets was signed on November 5, 2004. *(See* Order [BD-276] at 1, attach. as Ex. A to Objection to Sale.)

[5] The bankruptcy court and estate characterize the $27,500 sale to Huntcliff as the sale of a single pending litigation matter. The movants characterize the $27,500 sale to Huntcliff as the sale of two pending litigation matters, one for "post-petition alleged crimes" by Huntcliff and one for "pre-petition actions" of Huntcliff. (Objection to Sale at 4.) Regardless of whether one characterizes the pending litigation as one or two claims, all claims initiated by the movants against Huntcliff were sold to Huntcliff.

entirely hypothetical, recovery against Huntcliff would be promised to the estate for distribution to the estate's creditors while the rest of any proceeds would be abandoned back to the debtor for their personal [ORDER PAGE 14] benefit. *(Id.* at 8-9.)

The bankruptcy trustee's response to all this was essentially that creditors of the estate should not be asked to give up a sure thing now, $27,500 of assets to the estate, in lieu of some portion of an unlikely litigation recovery against Huntcliff. The trustee said, "with respect to the nature of the asset, as litigation where the debtor has pursued this in Fulton Superior Court and basically has never prevailed on any issue in that litigation, it's not a very valuable asset to any other entity than Huntcliff." *(Id.* at 15.) The trustee went on to note that, if any other entity wished to increase the offer submitted by Huntcliff by a minimum of $1,500 and was willing, like Huntcliff, to pay the estate cash for the asset that the estate would be willing to entertain that offer. *(Id.)* The trustee explained, "[t]he function, as the Court knows and Mr. Redfearn I assume knows, it's my function as the trustee and *(sic.)* to generate income for the estate. And this is what I'm doing by this motion. And we received no other offers. It's a valid offer and we ask the Court to approve it." *(Id.* at 16.) The bankruptcy court agreed with the trustee explaining,

> I think, Mr. Redfearn, with respect to, you know, the general issue of whether or not the trustee should be - I think all claims against a party are A *(sic.),* an asset of the estate. You can parse it into the accounts of the complaint. But we're talking about the sale of all of the estate's claims against Huntcliff. And unless somebody, including -- I mean, if you think they're worth a million [ORDER PAGE 15] dollars and you can pay the trustee $29,000 and you can have the claim and pursue it, but I can't let the trustee lose money that's on the table. *(Id.* at 23—24.)

Later in the hearing, the bankruptcy court expounded on the

justifications for accepting a sure thing now over an unlikely, unknown later.

> Right. And again I don't have other than that, I think that, you know, you have showed good grounds for the settlement. I think that you have articulated that getting that much money now in an estate which doesn't have sufficient funds to fund the litigation and that you've made an assessment and you've offered it to other people, including Mr. Redfearn, who thinks it's worth more, but obviously is unwilling and/or unable to come up and buy the litigation for that, I think your duties as the trustee are to liquidate it and bring money into the estate. So I'm fully prepared to approve the sale of both the web size and the e-mail and the piece of litigation for the amount stated.

(Id. at 27.)

On these facts, the Court concludes that the bankruptcy court's December 10, 2004, order conclusively addressed, once and for all, the disposition of the bankruptcy estate's pending litigation assets. As a final judgment of the bankruptcy court, the December 2004 order is appealable by right. *See* 28 U.S.C. § 158(a) (1) (2005).

When reviewing a bankruptcy court order as an appellate court, "the district court . . . may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings." BANKR. RULE 8013. While the district court reviews the bankruptcy court's legal conclusion using a *de novo* [ORDER PAGE 16] standard of review, *In* re *Atlanta Egg & Produce, Inc.*, 321 B.R. 746 (N.D. Ga. 2005) (Evans, J.), "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses." BANKR. RULE 8013.

The Court concludes that the following governs the trustee's decision to approve Huntcliff's purchase of the litigation claims pending against them. First, pursuant to 11

U.S.C. § 704, '[t]he trustee shall -- collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest . . ." By virtue of this directive, the trustee is vested with wide-ranging authority over the debtor's assets. COLLIER ON BANKRUCTCY — 15TH ED. REVISED ¶ 704.02. Still, before using, selling, or leasing property of the estate the trustee must provide notice of the pending use, sale, or lease, and a hearing must be held before the bankruptcy court. See 11 U.S.C. § 363(b) (1) (2005). Finally, "parties in interest," whose best interests the trustee must consider when selling inventory of the estate to satisfy the claims of the estate's creditors, include the bankruptcy debtors. *See In re Kazis,* 257 B.R. 112 (Bankr. D. Mass. 2001). This interest flows from the debtors' right, under 11 U.S.C. § 726(a) (6), to collect any surplus assets of [ORDER PAGE 17] the estate.

Given the applicable law and considering the facts of this case, the Court concludes that the decision to approve the sale of pending litigation claims to Huntcliff was consistent with the duties of the bankruptcy trustee set forth in 11 U.S.C. § 704. Further, the Court concludes that the sale of pending litigation claims to Huntcliff was in furtherance of the overriding purpose of bankruptcy litigation, "the just, speedy, and inexpensive determination of every case and proceeding." See BANKR. RULE 1001.

In this case, as required by law, a hearing was held on November 4, 2004, to discuss the sale of the bankruptcy estate's pending litigation against Huntcliff. (See Tr. 11/4.) During the hearing the movants here, debtors there, made the Court aware that one of the creditors of the estate had not received notice of the planned sale. *(Id.* at 22.) This error was corrected by providing the omitted creditor immediate notice and allotting twenty days for the omitted creditor to object to the sale. (Tr. 11/4 at 28; Appellant's Amendment to Mot. for Stay; Order for Conditional Sale Approved; Sale of Two Assets of the Bankr. Estate; Docketed November 17, 2004

(Docket Entry 292); Debtors Contest the Approval of the Sale; Requesting Stay Pending Appeal Pursuant to 11 U.S.C. § 363(m) ("Amendment to Stay") [22] at Ex. A.) The creditor notice issue is why the November 5, 2004, order was issued as a conditional order and not finally approved [ORDER PAGE 18] until December 10, 2004. After the bankruptcy court stated, "I think your duties as the trustee are to liquidate it and bring money into the estate." *(Id.* at 27.) The trustee went on to explain, "[t]his is a case in which there's a proposed $30,000 settlement and the claim's far in excess of that. There are going to be no assets to distribute to the debtors in this case. And [Mr. Redfearn] has no standing. Has no interest to the case because he's not going to receive any money." *(Id.* at 29.) The Court responded, "I understand that argument. I think what Mr. Redfearn says though is correct. If he could offer evidence that the asset that you're selling for 30 is worth enough money to pay all the claims plus, then that *(sic.)* why I'm letting him speak today, but I think certainly given the evidence and the fact that [] no other creditor or other party wants to pay anything more for the litigation is certainly evidence that the settlement you're making is fair . . ." *(Id.* at 29.)

Though the trustee and bankruptcy court did not cite to any statutory provisions during the hearing, from the portions of the transcript quoted above, it is clear to this Court that the trustee and bankruptcy court were discussing the application of 11 U.S.C. §704 and 11 U.S.C. § 726(a) (6). These are the same statutory provisions that the Court would use to reach the same result that the bankruptcy court reached, namely, the approval of the sale of the pending litigation claims against Huntcliff to Huntcliff. Given the [ORDER PAGE 19] apparent weakness of the claims against Huntcliff, [6] it would be inconsistent with the statutory duties

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[6] As summarized by counsel for Huntcliff, "[t]he litigation with Mr. Redfearn and the Huntcliff Home Associations has been going on for almost eight years. It's, as Mr. Silliman stated, Mr. Redfearn does not has not won one issue. It's taken him to the

of the trustee to ask the trustee to give up a sure $27,500 for the sale of the Huntcliff litigation in favor of the possibility of some future recovery. Thus, under a de novo standard of review, the Court affirms the legal conclusions made in the bankruptcy court's order dated December 10, 2004.

Because the December 10, 2004, order of the bankruptcy court was a final judgment appealable by right, as to this order, the Court **DENIES as moot** the motion for leave portion of Amendment Motion for Leave to Appeal Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets [10]. As the pending motion for stay was a motion for stay of the sale that has already been approved by the bankruptcy court, the Court also **DENIES as moot** the motion for stay portion of Amendment Notion for Leave to Appeal. Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets [ORDER PAGE 20] of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets 110] . Further, the Court DENIES the motion for emergency hearing portion of Amendment Motion for Leave to Appeal Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement and Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding 04-9104 Being One of the Two Assets [10]. consistent with the above, the Court **DENIES in part and DENIES as moot in part** the original Motion for Emergency Hearing, Motion for Stay, Settlement & Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate [4] . The Court also **DENIES in part and DENIES as moot in part** the duplicative Second Motion for

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Georgia Court of Appeals, to the Supreme Court . . ." (Tr. 11/4 at 30.)

Emergency Hearing, Motion for Stay Settlement & compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate Order Filed November 9, 2004 Approving Conditional Sale [11]. Finally, the Court **DENIES in part and DENIES as moot in part** the duplicative Motion for Emergency Hearing Pursuant to LR 7.2B, Motion for Stay Pursuant to 11 U.S.C. § 363(m) Settlement **&** Compromise Agreement, sale of Two Assets of the Bankruptcy Estate to the Huntcliff Homes Association, Inc. [43]

No additional evidence will be heard in this case. Therefore, the Court **DENIES** Motion for Permission of the U.S. District Court to Provide Additional Evidence of Illegal Activity Pursuant to 18 U.S.C. [ORDER PAGE 21] § 3057 Related to Case 02-97767-mgd and District Court Local Rule 79.1C(1), Interference with an Officer of the Court & 18 U.S.C. § 201, Re: Court Reporter Amelia Lopez, Brown Reporting Inc. [4];. Along the same lines, the Court **DENIES** Permission Requested to Submit Revised CD Including Docket Entry 019 Adversary Proceeding 02-9408, Amendment to Original Exhibits Supplied to the Court, Appellants Exhibits to United States District Court United States District Court case 1:04-CV-3245-JEC Pursuant to 11 U.S.C. § 8006 [44]. The law and facts of this case have now been thoroughly reviewed by not one, but two courts. No error in law or fact has been found.

CONCLUSION

For the foregoing reasons, the Court **DENIES in part and DENIES as moot in part** Motion for Emergency Hearing, Motion for Stay, Settlement **&** Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate [41; **DENIES in part and DENIES as moot in part** Amendment Motion for Leave to Appeal Filed on October 18, 2004, Motion for Emergency Hearing, Motion for Stay Settlement arid Compromise Agreement and Motion to Sell Two Assets of the Bankruptcy Estate, Adversary Proceeding

04-9104 Being One of the Two Assets [10]; **DENIES in part and DENIES as moot in part** Second Notion for Emergency Hearing, Motion for Stay Settlement & Compromise Agreement, Motion to Sell Two Assets of the Bankruptcy Estate Order Filed November 9, 2004 [ORDER PAGE 22] Approving Conditional Sale [11]; **DENIES** Motion for Permission of the U.S. District Court to Provide Additional Evidence of Illegal Activity Pursuant to 18 U.S.C. § 3057 Related to Case 02-97767-mgd and District Court Local Rule 79.1C(l), Interference with an Officer of the Court & 18 U.S.C. § 201, Re: Court Reporter Amelia Lopez, Brown Reporting Inc. [41]; **DENIES in part and DENIES as moot in part** Motion for Emergency Hearing Pursuant to LR 7.25, Motion for Stay Pursuant to 11 U.S.C. § 363(m) Settlement & Compromise Agreement, Sale of Two Assets of the Bankruptcy Estate to the Huntcliff Homes Association, Inc. [43]; AND **DENIES** Permission Requested to Submit Revised CD including Docket Entry 019 Adversary Proceeding 02-9408, Amendment to Original Exhibits Supplied to the Court, Appellants Exhibits to United States District Court United States District Court case 1:04-CV-3245-JEC Pursuant to 11 U.S.C. § 8006 [44].

The Clerk shall close this case in this Court.

SO ORDERED, this 21 day of July, 2005.

By: "s/ _____"
JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

By: "s/File Stamped"
FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
JULY 21 2005
Luther D. Thomas, Clerk
By: Deputy Clerk
(DC50,07/21/2005)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALEC F. REDFEARN, et al.,
Debtor/Appellants

v.

UNITED STATES TRUSTEE, et al.,
Defendants.

CIVIL ACTION NO.
1:04-CV-324 5-JEC

ORDER

The Court has received debtor/appellants' Motion for Reconsideration [53] . The Court notes that on July 21, 2005, the Court denied as moot debtor/appellants' bankruptcy appeal [50].

IT IS HEREBY ORDERED that the Court **DENIES** debtor/appellant's Motion for Reconsideration [53].

SO ORDERED, this 28 day of AUGUST, 2005.

"s/_____"
JULIE E. CARNES
United States District Court

By: "s/File Stamped"
FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
AUG 29 2005
Luther D. Thomas, Clerk
By: Deputy Clerk

UNITED STATES BANKRUPTCY COURT
Northern District of Georgia

In Re: Debtor(s)
Alec Floyd Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937
xxx-xx-9916

Margaret Annette Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937
xxx-xx-5269

Case No: **02-97767-mgd**
Chapter: **7**
Judge: **Mary Grace Diehl**

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED that the debtor is granted a discharge under § 727 of title It, United States Code, (the Bankruptcy Code).

"s/_____"
Mary Grace Diehl
United States Bankruptcy Judge

Dated: December 9, 2004

Form 7do

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION REGARDING THE BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

USSC EXHIBIT 6/17/05 A-45 M

FORM 7do continued

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER *7* CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property:*] [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

This discharge does not affect any property of the estate as defined by section 541 of the Bankruptcy Code, and the automatic stay of section 362(a) of the Bankruptcy Code continues to apply to any property of the estate unless and until the automatic stay has been terminated by order of the court or expires pursuant to section 362(c) of the Bankruptcy Code. Such property remains subject to administration by the trustee on behalf of the bankruptcy estate.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

when the bankruptcy case was converted.)

Debts that are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

a. Debts for most taxes;
b. Debts that are in the nature of alimony, maintenance, or support;
c. Debts for most student loans;
d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
f. Some debts which were not properly listed by the debtor;
g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

CERTIFICATE OF SERVICE

Total of 76 creditors, attorneys, and other parties listed – Two pages .... list has not been included in this reproduction of (BC310,12/09/2004)

No File Stamp
Docketed on **DEC 9 2004**

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

June 13, 2006

Alec Redfearn
605 Poinsetta Drive
Satellite Beach, FL 32937

RE: Redfearn v. U.S. Trustee, et al.

Dear Mr. Redfearn:

The above-entitled petition for writ of certiorari was postmarked May 23, 2006, and received June 13, 2006.

The appendix to the petition does not contain the following documents required by Rule 14.1(i). The order filed July 21, 2005, United States District Court Northern District of Georgia.

The orders filed September 13, 2004 and December 9, 2004 from the Bankruptcy Court, Northern District of Georgia.

Forty copies of the supplemental appendix are required that comply in all respects with the rules of the Court.

Unless the supplemental appendix is received by this Office in corrected form within 30 days of the date of this letter, the petition will not be filed. Rule 14.5.

The Office shall retain copies of the petition and your check in the amount of $300 in expectation of timely receipt of a properly prepared supplemental appendix.

Sincerely,
William K. Suter, Clerk
By: "s/_____"
S. Elliott
(202) 479-3025

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